BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS AND STUDENT

v.

KELSEYVILLE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022080771

ORDER FOLLOWING PREHEARING CONFERENCE, DENYING MOTION FOR SANCTIONS, DENYING MOTION TO DISMISS, AND CONTINUING ACTION TO HOLD A RESOLUTION SESSION

OCTOBER 7, 2022

On October 7, 2022, Administrative Law Judge Chris Butchko, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Sheila Bayne, Attorney at Law, appeared on behalf of Parents and Student. Aimee Perry, Attorney at Law, appeared on behalf of Kelseyville Unified School District.

The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

PENDING MOTIONS

KELSEYVILLE'S MOTION FOR SANCTIONS

On October 4, 2022, Kelseyville filed a motion for sanctions against Student. In support of the motion, Kelseyville included a declaration setting out that in June 2022, Parents requested Kelseyville provide Student's educational records to them. Kelseyville responded by pointing out Student had achieved the age of majority and now held his own educational rights. Accordingly, Parents could not act in his stead. Student's counsel then provided to Kelseyville a document request signed by Student.

Less than two months later, this action was filed against Kelseyville by the same counsel. Kelseyville contends that this action was filed by Parents on behalf of Student. Such filing, it contends, was frivolous and intended to cause unnecessary delay because opposing counsel knew Student held his own educational rights and Parents therefor could not bring an action on his behalf. Kelseyville contends it has been forced by opposing counsel's bad faith action to incur unnecessary legal fees and expenses.

Student did not file a response. The motion was discussed with both counsel at the PHC.

Kelseyville's motion is not well-taken. Kelseyville asserts, without demonstrating, that Student is not a party to the action. The request for due process hearing states in both the caption and text that the matter was brought both by Parents and Student. Rather than being an action brought on behalf of Student, Student filed this action in conjunction with Parents. For their part, Parents seek reimbursement of educational

fees and services they funded for Student in the 2020-2021 school year through the present. Kelseyville's motion does not contain sufficient facts to meet the burden of proof, and the readily available evidence contradicts Kelseyville's contention that this action was filed on behalf of, rather than by, Student. Kelseyville could not provide additional factual support when the motion was discussed at the PHC. Accordingly, Kelseyville's motion for sanctions is denied.

KELSEYVILLE'S MOTION TO DISMISS

On October 4, 2022, Kelseyville filed another motion, seeking to dismiss the action on two grounds. First, Kelseyville sought to have the matter dismissed due to Student's failure to participate in an early resolution session. Secondly, Kelseyville sought to have the matter dismissed due to lack of standing. Student did not file a response to the motion.

The motion was discussed with the parties at the PHC. Regarding the lack-of-standing argument, Kelseyville again argued Parents did not have standing to bring this action on behalf of Student. Student is a party to this action in his own right, and Kelseyville's argument fails. Kelseyville also argued Student and Parents lacked standing to bring this action based upon residence, as it is stated on page 5 of the due process hearing request that they were residents of Contra Costa County, rather than Lake County where Kelseyville is situated.

Asked to explain this at the PHC, Student's counsel stated that the mention of Contra Costa County was an error, and that Student and Parents reside in Lake County. Kelseyville was asked if it had any reason, other than the statement in the complaint, to believe Student and Parents live in Contra Costa County and not in Lake County. Kelseyville stated it did not.

Because the reference to residence in Contra Costa County was made in error and no reason exists to believe that Student is not a resident in the Kelseyville Unified School District, Kelseyville's request to dismiss the action on that basis is denied.

Kelseyville's argument that the matter should be dismissed for failure to participate in an early resolution session has more substance. A local educational agency is required to meet with the parents and a student's relevant individualized education program team members within 15 days of receiving a student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006)). The meeting, called an early resolution session, can be waived in writing by both parties or by agreement to use mediation. (34 C.F.R. § 300.510(a)(3) (2006).) If the parents or non-conserved adult student do not attend the resolution session, and it was not waived, there can be no due process hearing until the resolution session is waived or held. (34 C.F.R. § 300.510(b)(3) (2006).) The local educational agency can request the case be dismissed after a 30-day period, if it documented reasonable efforts to hold the resolution session and the parents or non-conserved adult student did not attend. (34 C.F.R. § 300.510(b)(4) (2006).)

In support of its motion, Kelseyville included a declaration from its Director of Special Education Services. The declaration states the Director emailed Student on September 8, 2022, requesting to hold an early resolution session. The declaration further states "the District reached out to Student by email, the District did attempt to call Student, but his phone number that the District has no longer works." It is unclear whether one or two attempts were made to email Student, and no specifics were given for the latter attempts to email and call Student.

At the PHC, Student's counsel explained Student did not receive any attempt to contact him regarding scheduling a resolution session.

Kelseyville was asked if there were any other attempts to contact Student; there were not. Kelseyville did not attempt to contact Parents. Despite having been served with a due process hearing request drafted by Student's counsel, Kelseyville did not contact Student's counsel to pursue the scheduling of a resolution session.

Kelseyville has not demonstrated it made a reasonable effort to hold the resolution session. (34 C.F.R. § 300.510(b)(4) (2006).) Accordingly, the motion to dismiss is denied.

CONTINUANCE TO HOLD A RESOLUTION SESSION

At the PHC, both parties expressed willingness to attend an early resolution session. Without holding or waiving an early resolution session, a matter may not proceed to hearing. (34 C.F.R. § 300.510(b)(3) (2006).) To allow time for the parties to attend an early resolution session, the matter is continued as follows:

PREHEARING CONFERENCE in this matter will be resumed on Monday, October 31, 2022, at 1:00 PM.

DUE PROCESS HEARING will take place on Tuesday, November 8, 2022, through Thursday, November 10, 2022.

The parties shall immediately notify all potential witnesses of the hearing dates and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing. Instructions for issuing and responding to subpoenas and optional forms for subpoenas can be found on the website at https://www.dgs.ca.gov/OAH/Case-Types/Special-Education/Forms/Subpoenas?search=special%20education%20subpoena.

The parties are instructed to file a statement no later than October 28, 2022, reporting whether a resolution session has been held or waived. If the resolution session has neither been held nor waived, the hearing dates will be vacated and an order to show cause will be issued as to why the matter should not be dismissed and sanctions ordered against both parties.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH by visiting OAH Secure e-file at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

FAILURE TO COMPLY

The failure to comply with this Order may result in the exclusion of evidence or other sanctions.

IT IS SO ORDERED.

Chris Butchko

Chris Butchko
Administrative Law Judge
Office of Administrative Hearings