BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022020609

ORDER DENYING MOTION TO COMPEL PROGRESS REPORTS FOR 2020, 2021, AND 2022, OR STATE THAT THE REPORTS DO NOT EXIST

JUNE 29, 2022

Student filed an amended request for due process naming Long Beach Unified School District, called Long Beach, on May 10, 2022. On June 17, 2022, Student filed a motion to compel production of reports on goals for 2020, 2021, and 2022, or state that the reports do not exist. At the June 20, 2022 prehearing conference, called a PHC, Long Beach's attorney represented that it had already produced responsive documents to Student, and intended to file a written opposition on June 22, 2022.

The ALJ ordered the parties to meet and confer after the PHC regarding this motion before June 22, 2022, Long Beach's opposition due date. Long Beach did not

file a written opposition on June 22, 2022, but filed the opposition on June 24, 2022--two days late. Long Beach's attorney represented in a declaration under the penalty of perjury supporting the opposition that:

1. the parties met and conferred on June 24, 2022;
2. on April 15, 2022, Long Beach produced a copy of all the records it could locate and all the records that existed in response to Student's request; and
3. Long Beach looked in its two electronic file servers as well as asked former teachers for progress reports.

APPLICABLE LAW

In general, there is no right to prehearing discovery in due process proceedings under the Individuals with Disabilities Education Act. (20 U.S.C. § 1400 et seq.) Rather, the IDEA provides parties with the right to present evidence and compel the attendance of witnesses at "a hearing conducted pursuant to subsection (f) or (k)" of section 1415 of title 20 of the United States Code. (20 U.S.C. § 1415(h).) California provides a similar right to present evidence and compel the attendance of witnesses in due process proceedings (Ed. Code, § 56505, subd. (e)), but does not confer the right to prehearing discovery.

However, Parents or adult students are entitled to request copies of the educational records relating to the student in question that are maintained by the school district. (Ed. Code, § 56504; *Burnett v. San Mateo Foster City School District,* (9th Cir. 2018) 739 Fed. Appx. 870, 873.) The parties are also entitled to disclosures of any evidence an opposing party plans to introduce at hearing 5 business days prior to the date of the first day of hearing. (Ed. Code, 56505(e)(7).)

STUDENT'S MOTION TO COMPEL RESPONSIVE DOCUMENTS TO EDUCATIONAL RECORDS IS MOOT

At the June 20, 2022 PHC, Student's attorney represented that the documents subject to the motion to compel were requested through multiple educational records requests. Long Beach represented at the PHC that one of the issues in Student's amended complaint also include whether Long Beach timely provided progress reports on annual goals upon Parents' request from the 2019-2020 school year—the same subject of Student's motion to compel. The fact that Student's motion to compel production of educational records is also framed as a FAPE denial issue in Student's amended complaint is irrelevant to the determination of OAH's ruling on this motion to compel.

However, Long Beach's attorney represented at the PHC and in the opposition that Long Beach had already produced responsive documents to Student's educational document requests. Long Beach's attorney represented that on April 15, 2022, it produced a copy of all the records it could locate and all the records that existed in response to Student's request. Long Beach's attorney also represented that it looked in its two electronic file servers as well as asked former teachers for any progress reports.

Further, Student never disputed that Long Beach produced documents to his educational records request. Student's motion contends that the documents Long Beach produced did not include a certain category of documents. Specifically, Student represented that the documents produced by Long Beach purportedly in response to Student's educational records requests did not include any progress reports for 2020, 2021, and 2022. Therefore, Student requested in the motion to compel that OAH order Long Beach produce the progress reports for 2020, 2021, and 2022, or state that the reports do not exist.

Education Code section 56504 entitles Student to educational records relating to Student that are maintained by Long Beach. Student is entitled to a representation from Long Beach that it has produced all responsive documents pursuant to Student's educational records requests which Long Beach's attorney did in in writing, in its opposition to the motion to compel. Therefore, Student's motion to compel production of responsive documents to his educational records request is moot as Long Beach represented that it produced all responsive documents to Student's educational records request.

Student is not entitled to have Long Beach make a specific representation that a particular type of document exists, or does not exist. Long Beach is not required to specifically identify the progress reports for 2020, 2021, and 2022 from amongst the educational records Long Beach produced to Student. To the extent that Student contends he has the right to have Long Beach identify the type/category of documents it produced in response to Student's educational records request, such as the progress reports for 2020, 2021, and 2022, Student has not cited to any supporting legal authority. Student's request that Long Beach state that the progress reports for 2020, 2021, and 2022 do not exist, if such were the case, is therefore denied.

WARNING OF FUTURE SANCTIONS

Both parties ignored the ALJ's order to meet and confer before June 22, 2022. The parties met and conferred on June 24, 2022. The opposition did not state why the attorneys for the parties ignored the ALJ's order to meet and confer after the PHC, and before the June 22, 2022 opposition due date. This is a warning to both attorneys that should either attorney ignore the ALJ's order again, sanctions shall be considered as it will be a second time the attorney(s) ignored the ALJ's order in this case.

ORDER

1. Student's motion to compel the production of production of progress reports for 2020, 2021, and 2022, or state that the reports do not exist, is denied.

Sabrina Kong

Sabrina Kong

Administrative Law Judge

Office of Administrative Hearings