

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010100312

ORDER DENYING MOTION TO
DISMISS

Parent (Mother) filed a due process hearing request¹ (complaint) on October 6, 2010, naming San Francisco Unified School District (District). Student's Parents are divorced. Student's complaint listed his physical address in San Francisco. Mother listed her address in Modesto. On October 22, 2010, District filed a motion to dismiss the complaint alleging Mother did not hold Student's educational rights. On October 25, 2010, Mother filed a copy of a court order indicating that Student's Parents had joint legal and shared physical custody.

During the prehearing conference (PHC) on October 28, 2010, the motion to dismiss was discussed. The undersigned Administrative Law Judge (ALJ) ordered Mother to provide further evidence of custody in order to rule on the motion by October 29, 2010, at 12:00 p.m. Mother filed a copy of another court order. District filed a timely response.

The ALJ's PHC order dated October 29, 2010, ordered Mother to submit to OAH and District additional documentation or sworn declaration to show the status of legal custody by November 3, 2010, at 12:00 p.m. Mother filed a timely response. District filed a timely response in opposition, stating they had received Mother's declaration, but not the custody order referred to in the declaration.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

According to the California Education Code the term “parent” can be defined many ways. This is to ensure that children’s rights are protected and not defeated because of an unusual parenting situation. When there is more than one biological parent, they are both presumed to be the “parent” unless the biological parent does not have legal authority to make educational decision for the child. (Ed Code §56028, subd. (b)(1)).

A parent, among others, has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Based on the above, OAH does not have jurisdiction to entertain claims by a person who does not hold the Student’s education rights. In that same vein, OAH cannot resolve a custody issue or determine the holder of educational rights, as that request is within the province of a Family Court.

DISCUSSION

Mother asserts that she holds Student’s educational rights because she was able to enroll him in District’s school and because OAH’s initial scheduling order listed the names of both Parents. Mother provided copies of orders from Parent’s family law case from Stanislaus County Superior Court in case number 171664, dated March 4, 2009, April 8, 2009, and August 10, 2009, and argues that these orders establish that she has joint legal custody, despite ongoing continuances. Specifically, the court order dated April 8, 2009, gives Student’s Parents joint legal and shared physical custody, with Mother as the primary caregiver. The court order of August 10, 2009, states there is no change to the custody order.

Mother’s declaration states that the order dated April 8, 2009, giving Parents joint legal custody, is the last order in effect and accurately reflects the current custody status. Mother’s declaration also states that Student went to live with his Father in San Francisco by mutual agreement.

District challenged the Mother’s status as the holder of Student’s educational rights. Since the court order of April 8, 2009, Student’s physical custody has changed. Student has been living with his Father in San Francisco since June 2010. This raises factual questions regarding whether there has been a change in the Parents’ custody rights by court order or mutual agreement between April 2009 and June 2010. Mother’s declaration and the court

order of April 8, 2009, states that the court referred Student to the University of California, San Francisco, for evaluation. Mother's declaration states that Student went to live with his Father in San Francisco by mutual agreement for this reason.

OAH does not have jurisdiction to hear a matter without a definitive showing that Mother holds the education rights. That Mother was able to register Student in school and that both Parents' names were on the scheduling order, are administrative matters that are indicative of, but alone not enough, to deem her to be the holder of educational rights. The court orders giving Parents joint legal custody standing alone are not conclusive because of the ongoing continuances in the family law case. However, the above evidence, plus Mother's declaration stating that the order dated April 8, 2009, giving Parents joint legal custody, is the last order in effect and accurately reflects the current custody status, is sufficient to show that she has educational rights to bring this action. There is no evidence to the contrary.²

District cites two prior OAH orders dismissing the complaint due to lack of holding a student's educational rights. (*Student v. San Luis Coastal Unified School Dist.* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2009100155.) (*Student v. Pasadena Unified School Dist.* (2006) Cal.Ofc.Admin.Hrngs. Case No. 2006030695.) One order dismissed a student's complaint where there was a dispute between the two parents with conflicting assertions of the student's educational rights, holding that custody determinations are to be resolved in family court. The other order involved the faulty transfer of educational rights from a legal guardian to an advocate without court approval. Neither scenario applies in this case. Accordingly, the evidence establishes that Mother jointly holds Student's educational rights along with Father, and has standing to bring this action.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: November 17, 2010

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings

² Court records located at the Stanislaus County Superior Court such as Parent's family law case are presumably public records and available to both parties. District has not produced any documents to rebut Mother's showing of joint legal custody.