

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011010139

ORDER GRANTING DISTRICT'S  
MOTION TO DISMISS AT TIME OF  
HEARING

On March 30, 2011, Administrative Law Judge (ALJ), Judith L. Pasewark held a telephonic prehearing conference (PHC) in the above entitled matter. Nicole Hodge Amey, attorney for Student, and Debra K. Ferdman, attorney for the District, participated in the PHC. The ALJ issued a written Prehearing Conference Order following the PHC on March 30, 2011.

On March 29, 2011, a day prior to the PHC, the District filed a Motion to Dismiss Student's complaint in its entirety. The District presented two contentions, (1) Student, currently a ward of the juvenile court pursuant to Welfare and Institutions Code, section 300, had no current holder of educational rights; and (2) Student's complaint was moot due to a fully performed settlement agreement, executed January 27, 2011, which contained releases and waivers of rights regarding the issues raised by Student's complaint. On March 29, 2011, Student filed an opposition to the Motion to Dismiss, which addressed the issue of educational rights only. During the PHC, the ALJ indicated that she would rule on the District's Motion to Dismiss as a motion in limine prior to the commencement of the hearing, on April 4, 2011, at 10:00 a.m.

On April 4, 2011, the District's counsel and Director of Special Education appeared for hearing and argument on the motion. Student's attorney appeared, however the foster parent did not appear, nor did any other person purporting to hold Student's educational rights. Student's attorney represented that the foster parent had never been formally removed as the holder of educational rights, and as such the foster parent continued as the holder of Student's educational rights. The foster parent did not appear for voir dire and testimony on the motion, as "she did not want to participate." Student's counsel indicated that she would bring the foster parent later in the afternoon for the hearing. Counsel for the District objected to the foster parent's absence, and requested that the District's motion be granted.

## APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).)

A “parent” means any of the following:...(2) a foster parent if the authority of the biological or adoptive parents to make educational decisions on the child’s behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations....(5) a surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code in accordance with Section 300.519 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code. (Ed. Code, §56028, subd. (a)(2)and (5).)

If a judicial decree or order identifies a specific person or persons (under Ed. Code §56028, subd (a) (1) to (4).) to act as the “parent” of the child or to make educational decisions on behalf of the child, then that person(s) shall be determined to be the “parent.” (Ed. Code, §56028, subd. (b)(2).)

## FACTUAL FINDINGS AND DISCUSSION

The declarations submitted with the motion as well as the arguments of counsel having been submitted, the ALJ finds as follows:

1. Student is currently a foster child and ward of the court through the Los Angeles County Dependency Court. Student resides with her foster mother within the boundaries of the District. Counsel for Student has provided no documentation or court orders appointing the foster parent as the holder of educational rights for Student, however it was assumed that the foster parent qualified as the holder of education rights pursuant to Education Code section 56501, subd. (a) and section 56028, subd, (a)(2).)

2. The foster parent filed this complaint, appeared at the mediation session, reviewed and signed the Settlement Agreement on this matter, and appeared at a March 2011 IEP meeting and apparently signed Student’s Assessment Plan.

3. Sometime after the settlement agreement on January 27, 2011, the foster parent informed Student’s counsel that she no longer wanted to act as the holder of Student’s educational rights. In a series of communications between Student’s counsel and the District, counsel confirmed that the foster parent no longer held Student’s educational rights.

4. On March 18, 2011, Student’s counsel informed a District employee by telephone that counsel would not attend a scheduled IEP meeting on March 24, 2011, because Student did not have anyone holding her educational rights.

5. On March 21, 2011, the District's counsel sent a letter to Student's counsel requesting verification of the identity of the holder of Student's educational rights. On March 21, 2011, Student's counsel responded in writing, and stated. "Student is scheduled to receive a Court Appointed Educational Rights Holder prior to the hearing. The Rights Holder will attend her IEP. Once the person is appointed the IEP should be scheduled.....Student is a ward of the Court. The court has not granted the District the authority to appoint a surrogate for Student. I have and I am again informing you that the Court is in the process of appointing an educational rights holder for Student."

6. Student's counsel further wrote the District on March 23, 2011, "Student's educational rights holder will be appointed by the Juvenile Court on Thursday March 24, 2011." The letter goes on to state, "I do not have the date that the foster parent released educational rights for Student. During mediation she stated she did not want the rights and that she would not have accepted a foster child had she known all of this was involved." The District rescheduled the IEP meeting for March 28, 2011, to accommodate the appointment of a new holder of educational rights.

7. On March 28, 2011, Student's counsel appeared at the IEP meeting with Student and the foster parent. Counsel told the IEP team that a rights holder had not yet been appointed by the Court. The foster parent apparently suggested that she resume as rights holder, but was discouraged by Student's counsel who indicated that the foster parent had given up those rights and should not be the educational rights holder now. The IEP could not be completed.

8. On March 30, 2011, the ALJ informed both counsel that the District's Motion to Dismiss the Complaint would be heard prior to commencement of the due process hearing at 10:00 a.m., on April 4, 2011. In oral discussions, Student's counsel was admonished to have a holder of educational rights present, as well as some form of documentation or docket sheet indicating the appointment of a new holder of educational rights.

9. On April 4, 2011, Student's counsel appeared for hearing; however she did not present documentation verifying the identity of the holder of Student's educational rights. Student's counsel argued that the foster parent had never been formally removed as the holder of educational rights and therefore she would be acting on Student's behalf during the hearing. The foster parent, however, was not present as requested for the hearing on the motions, thereby preventing the ALJ from voir dire, and preventing the District from obtaining testimony under oath.

Based upon the above factual findings, the ALJ finds that the foster parent has relinquished her authority to act as Student's holder of educational rights. Further, the ALJ finds that notwithstanding the foster parent's lauded abilities to provide Student with a stable foster home, the foster parent is currently unable or unwilling to act on Student's behalf as the holder of educational rights. Therefore, there is currently no one with legal standing to proceed to hearing on Student's behalf at this time. The District's Motion to Dismiss the Complaint in its Entirety is granted without prejudice. As the District's motion is granted on

the basis of its first contention, the ALJ declines discussion, consideration and ruling on the District's second contention regarding the validity of the settlement agreement waivers and releases. The hearing dates on this matter are vacated.

IT IS SO ORDERED.

Dated: April 05, 2011

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings