

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GRANDPARENT ON BEHALF OF
STUDENT,

v.

JOHN SWETT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012040673

ORDER DENYING REQUEST FOR
ADDITIONAL DECLARATIONS;
ORDER DENYING MOTION TO
DISMISS

On April 17, 2012, Student's Grandparent, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) against the John Swett Unified School District (District) with the Office of Administrative Hearings (OAH). On April 27, 2012, the District filed a motion to dismiss, asserting that Grandparent did not have the legal authority to file the complaint against the District because she does not meet the definition of a "parent" under Education Code, section 56028. On May 2, 2012, Student filed an opposition to the motion that asserted that Student's Mother had granted the Grandparent authority over Student's educational rights, including the right to file this matter, in a number of written authorizations starting in 2006. Student also sought sanctions against the District for filing a frivolous motion because the District had permitted Grandparent to consent to individualized education program (IEP) offers. On May 3, 2012, the District filed a reply as to the motion to dismiss and opposition as to the motion for sanctions. The District contended that any prior authorizations from Mother were superseded by an authorization from Mother, dated May 24, 2011, which only gave Grandparent the right to act as Mother's representative at IEP team meetings. The District contended that because it did not specifically give Grandparent educational rights for Student, even if Grandparent previously had those rights, she no longer does.

On May 9, 2012, the Office of Administrative Hearings, by Administrative Law Judge (ALJ) Castillo, issued an order denying Student's motion for sanction. ALJ Castillo also ordered Student's Mother to provide a declaration that she has transferred her educational rights for Student to Grandparent and that Grandparent has the legal authority to initiate the present due process action.

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).

On May 10, 2012, the District filed a request for modification of ALJ Castillo's order. The District requests that Mother be ordered additionally to declare: a) when she transferred her educational rights for Student to Grandparent; b) how the rights were transferred (e.g., whether the transfer occurred through judicial order); c) what specific rights were transferred; and d) what conditions, if any, apply to the transfer. The District also requested that OAH order Grandparent to submit a declaration stating whether Grandparent contends she is a "parent" under Education Code, section 56028 and if so, what facts support her contention.

On May 15, 2012, Student submitted Mother's declaration, which is dated May 14, 2012, and which was made under declaration of perjury. Mother declares that she has transferred her educational rights for Student to Grandparent, and that Grandparent has the legal authority to initiate and prosecute this action. Mother's declaration addresses all points ordered by ALJ Castillo.

DISCUSSION

The District has failed to provide any persuasive basis for its request that the points addressed in Mother's declaration be expanded to include the information which the *District* believes pertinent. ALJ Castillo had the benefit of the District's motion to dismiss as well as its reply to Student's opposition, but chose only to require Mother to submit a declaration stating that she had given her educational rights for Student to Grandparent and that Grandparent had the authority to proceed with the instant due process action. Mother has submitted a declaration that complies with ALJ Castillo's order. Nor has the District provided any grounds for requiring that Grandparent submit an additional declaration stating whether she believes she is a "parent" for purposes of Education Code, section 56028. At this point in the litigation, whether Grandparent is or is not a parent is not relevant. The issue presently pending before OAH is whether Mother has ceded her educational rights for Student to Grandparent, not whether someone other than Mother legally meets the definition of a parent.

The District has provided no basis for its contention that an individual must meet the definition of a "parent" under California law in order to hold the educational rights for a student. Nor has the District provided any support for its contention that a parent can only transfer his or her educational rights for a student to another person through a judicial proceeding.

The District's motion for additional declarations is therefore denied.

Student has submitted a declaration from Mother that comports with ALJ Castillo's Order issued by OAH on May 9, 2012. Student has adequately demonstrated that Mother knowingly and specifically has transferred her educational rights for Student to Grandparent. Grandparent therefore has the authority to pursue this administrative due process action on

Student's behalf. The District's motion to dismiss, based on Grandparent's lack of standing, is denied.

ORDER

1. The District's request for additional declarations is denied.
2. The District's Motion to Dismiss based on Grandparent's lack of standing to pursue this action is denied. This matter shall proceed as scheduled.

Dated: May 18, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings