

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HAYWARD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090581

ORDER REQUIRING VERIFICATION
THAT MOTHER FILED COMPLAINT
AND DOCUMENTATION OF
EDUCATIONAL RIGHTS

The Office of Administrative Hearings (OAH) received a request for due process hearing (complaint) on behalf of Student on September 17, 2012. The complaint was filed in the name of Mother, but the complaint is not signed.¹ A review of the documents and recent contacts in this matter raises questions about whether this complaint was authorized by Mother and who is authorized to participate in this matter.

On October 2, 2012, OAH received an unsigned request to continue the mediation in this matter. On October 12, 2012, OAH received an unsigned amended complaint in the name of Mother.² On October 22, 2012, OAH received an unsigned document captioned, “Voidable Order Dismissing SELP [sic] Lack of Notice – Improper Date” in the name of Mother. The return address on the envelope sending this document to OAH bears Grandmother’s name and has the notation “c/o” in front of the address, which is the same as Student’s and Mother’s.

On October 29, 2012, OAH received an unsigned Motion for Stay Put. On October 30, 2012, OAH received another Motion for Stay Put in the name of the Mother with a similar “/s” notation along with other marks that may be an illegible signature. On November 16, 2012, OAH received a document captioned, “Resolution Session.” Mother’s name is on the top left of the first page. The last page bears Grandmother’s signature, and a similar “/s” notation seen on the other documents above Mother’s name. On December 10, 2012, OAH received a letter bearing Mother’s name to District’s Superintendent and the Superintendent of Castro Valley Unified School District (Castro Valley) concerning Castro Valley’s responsibility to provide Student a free appropriate public education. The letter has the same “s/” notation and no signature.

¹ Instead of a signature, “s/s” is written on the signature line.

² A document attached to the amended complaint notes that on July 12, 2012, Grandmother did not have educational rights to sign Student’s amended individualized education program.

On November 5, 2012, the OAH calendar clerk assigned to this case called Mother to inform her that the prehearing conference was continued. Mother stated that she did not know anything about the case and OAH staff needed to talk with Grandmother. OAH staff spoke with Grandmother and instructed her that she needed a letter from Mother giving Grandmother educational rights to participate in this case. After this, Grandmother has repeatedly called OAH staff and was repeatedly told that Mother needed to contact OAH concerning the case. OAH has not received any call from Mother.

This matter was scheduled for mediation on December 11, 2012. The mediator confirmed the mediation with both Parent and Grandparent on December 7, 2012. Grandmother assured the mediator that she would bring a signed and notarized letter giving her educational rights to participate in the mediation. No one on behalf of Student showed up for the mediation. The mediator called Grandmother who said neither she nor Mother could attend the mediation due to a family crisis. Grandmother also stated she did not have an assignment of educational rights from Mother.

APPLICABLE LAW AND DISCUSSION

Information concerning special education services, including information concerning special education proceedings that OAH conducts, is confidential. (Ed. Code, § 56515, subd. (a).) Individuals who are not authorized to have access to this confidential information cannot receive information about, or participate in the OAH proceedings. (*Ibid.*)

The right to file a request for a due process hearing concerning a student's special education services is held by a parent or guardian of a minor student, among others in certain circumstances. (Ed. Code, § 56501, subd. (a).) A parent includes, among others, a student's biological or adoptive parent and "[a]n individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, an individual who is legally responsible for the child's welfare." (Ed. Code, § 56028, subd. (a)(4).)

The filings in this matter and the contacts with OAH staff and the mediator raise concerns about who filed this action and who is participating in it. OAH does not have anything signed by Mother indicating that she filed this complaint with OAH. Nor does OAH have anything indicating that Grandmother has authority to participate in this matter.

OAH cannot proceed with this matter until it is clarified that Mother filed the complaint. Grandmother cannot participate in this case unless OAH has verification that she is legally authorized to do so.

ORDER

1. Within 5 business days of the date of this order, Mother shall submit to OAH a written statement indicating whether or not she filed the complaint in this matter. If Mother fails to do so, this matter shall be dismissed.

2. OAH shall not permit Grandmother to participate in this case unless or until Mother provides either (a) an assignment of educational rights to Grandmother, or (b) written verification that Student lives with Grandmother and Grandmother is acting in the place of Mother for all purposes in the matter, as authorized by Education Code 56028, subdivision (a)(4).

3. Mother shall serve District with copies of documents submitted to OAH.

Dated: December 14, 2012

/s/

JUDITH A. KOPEC
Division Presiding Administrative Law Judge
Office of Administrative Hearings