

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OXNARD UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2012110054

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On October 31, 2012, Student's father (Father) filed a due process hearing request (complaint) naming Oxnard Union High School District (District).

On February 7, 2013, District filed a motion to dismiss the complaint alleging that Father does not, and did not at the time of filing the complaint, hold Student's educational rights. Student filed opposition on February 11, 2013.

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.) 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. Biological parents 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)).

Special education due process hearings under the IDEA encompass "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).) The jurisdiction of the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

ANALYSIS

Here, District does not move to dismiss this action as beyond the jurisdiction of OAH. Instead, District seeks dismissal on the ground that Student's grandparents (Grandparents) hold Student's educational rights and therefore Father lacks standing to prosecute this action, which requires a factual inquiry.

District submits an uncertified, unauthenticated copy of a 2004 order apparently issued by a District Court in Texas, placing Student under the joint conservatorship of Grandparents, Father and Mother, and granting to Grandparents only "the exclusive right to represent the child in legal action[s]....and the exclusive right to make decisions concerning the child's education." The order acknowledges that Student will sometimes be in the custody of Grandparents, and sometimes in the custody of his parents. District also supports its motion with the declaration of its director of special education, stating that he received a copy of the order from a special education teacher, who had received a copy of the order from Grandparents, who had received a copy of the order from the Texas court, which declaration constitutes no more than a statement of multiple layers of inadmissible hearsay.

Student's opposition is supported by a notarized statement from Grandparents, dated August 15, 2012, that they have transferred "permanent custody" of Student to Father. Regardless of whether a notarized statement would suffice to override an order of the Texas court designating Grandparents the holders of Student's educational rights, having custody of the Student does not, by itself, confer on Father the right to make educational decisions for Student.

In order to obtain the relief requested in the complaint at hearing, Father will be required to prove his right to such relief. Such a showing must include that Father holds educational rights or held educational rights during the applicable time period. District's motion to dismiss requires a factual determination of disputed facts similar to that required for a summary judgment motion. The IDEA and the California Education Code do not provide for summary adjudication or summary judgment, and, therefore, District's motion must be denied.

IT IS SO ORDERED.

Dated: February 11, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings