

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. 2013110171

ORDER GRANTING DISTRICT'S  
MOTION TO DISMISS THE  
COMPLAINT FOR LACK OF  
STANDING AND GRANTING  
REQUEST FOR OFFICIAL NOTICE

On November 1, 2013, attorney Tania Whiteleather filed a request for mediation and due process for Student's father, as Parent, on Student's behalf naming Oxnard Union High School (District). On March 13, 2014, District filed a motion to dismiss the complaint on the ground that Father did not hold educational rights for Student and therefore lacked standing to bring the matter on Student's behalf. The motion was supported by a declaration under penalty of perjury from a District representative, and copies of two court orders, of which District separately requested that OAH take official notice, along with three Texas statutes. Ms. Whiteleather filed an opposition to the motion on March 18, 2014, supported by her declaration under penalty of perjury.

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.)

A party 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.)

The term "parent" can be defined many ways 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 “parent” unless the biological parent does not have legal authority to make educational decisions for the child. (34 C.F.R. 300.30 (b)(1); Ed. Code §56028 (b)(1)). If a judicial decree or order identifies a specific person or persons to act as the “parent” of a child or to make educational decisions on behalf of a child, that person or persons shall be determined parent for purposes of standing. (See Ed. Code §56028 (b)(2).)

Official notice may be taken before submission of a matter for decision of any fact which may be judicially noticed by the courts of California. (Gov. Code §11515; Evid. Code §§ 451(a), 452(b).)

## DISCUSSION

District’s motion seeks dismissal of the complaint on the ground that Student’s father did not hold educational rights for Student at the time the complaint was filed, and therefore did not have standing to bring this action. Student’s opposition and the accompanying declaration of counsel contended without citing to any supporting evidence or legal authority that Ms. Whiteleather represented Student directly, not the educational rights holder, and therefore the matter should not be dismissed.

Student is a 14 year-old boy. An August 17, 2004 Texas court order conferred on Student’s grandparents the role of “nonparent joint managing conservator.” Among the delineated rights and duties was the “exclusive right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child” and “the exclusive right to make decisions concerning the child’s education.” The order did not otherwise confer those rights to either of Student’s biological parents. The complaint asserts that Student moved to California to live with his father in 2012 and attended a District school. District credibly established through the declaration of a District employee that Student stopped attending a District school on February 27, 2014, and that he may have returned to Texas. On February 27, 2014, a California court order designated Alice Smith, a “CASA advocate,” as Student’s educational rights holder, pursuant to California Rules of Court Rule 5.502. The California order also temporarily limited Student’s father’s rights to make educational and developmental-services decisions for Student.

Student’s opposition offered no evidence that Student was an emancipated minor at the time the complaint was filed, thus possibly entitling him to be directly represented by counsel as opposed to his educational rights holder, as Ms. Whiteleather so asserted in her declaration under penalty of perjury. Student also offered no evidence to the contrary and did not dispute District’s credible evidence establishing that Student’s father did not hold educational rights at the time this complaint was filed, or at any time thereafter. In fact, Ms. Whiteleather asserted in her declaration under penalty of perjury that she was working with the court-appointed educational rights holder, thereby acknowledging that Student’s father did not hold educational rights.

Student's father did not have standing to bring this action on Student's behalf. The complaint will be dismissed without prejudice to the educational rights holder's right to file a due process complaint on Student's behalf.

#### ORDER

1. District's request for official notice of 1) a court order filed with the 318<sup>th</sup> Judicial Court of Texas on August 17, 2004, 2) California Superior Court Order Designating Educational Rights Holder dated February 27, 2014, and 3) Texas Family Code sections 152.001, 152, 101, and 152.106 is granted.

2. District's motion to dismiss the complaint is granted without prejudice to the right of the current educational rights holder for Student to file a due process complaint on Student's behalf.

DATE: March 20, 2014

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings