

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Student,

vs.

PASADENA UNIFIED
SCHOOL DISTRICT,

Respondent.

OAH No. 2006030695

ORDER GRANTING MOTION TO
DISMISS

On March 17, 2006, the Office of Administrative Hearings Special Education Division (OAH) received a Request for Mediation and Due Process Hearing Form (complaint), and attached exhibits, from Quisha Castro-Lopez (Ms. Castro-Lopez) on behalf of Student.¹

On March 21, 2006, attorney Jack B. Clark, Jr. with Best Best & Krieger LLP, filed a motion to dismiss on behalf of the Pasadena Unified School District (District). The motion asserts that Ms. Castro-Lopez does not have standing to file a request for due process for Student because (1) her position as an employee of Rosemary Children's Services (RCS), the entity that owns the nonpublic school (NPS) Student now attends, constitutes a prohibited conflict of interest under Education Code section 56042, and (2) she is not Student's parent, guardian, or surrogate parent.

On April 11, 2006, attorney Bonnie Z. Yates, filed an opposition on Student's behalf. Included with the opposition are declarations from Ms. Castro-Lopez and Megan Brown, Director of Education, for RCS. Student argues that her grandmother, as her legal guardian, has the right to designate anyone she wants to represent Student's educational interests and Ms. Castro-Lopez was so designated under Government Code section 7579.5(n). In addition, Student argues that Education Code section 56042 does not apply to Ms. Castro-Lopez, or should not be applicable to due process hearings.

On April 21, 2006, a Best Best & Krieger attorney, Cathy S. Holmes, filed a reply for the District contending that because Student is a dependent of the Los Angeles County

¹ In the complaint, Ms. Castro-Lopez identified herself as Student's "Parent."

Juvenile Court, any limitation or transfer of her educational rights must be by court order. On April 24, 2006, Student filed a reply to the District's reply.

FACTUAL BACKGROUND

Student's grandmother (Legal Guardian) is Student's court-appointed legal guardian and parent for purposes of IDEA. No evidence was presented regarding her date of appointment, or whether the appointment issued from the juvenile, family or probate court. On January 23, 2006, prior to Legal Guardian's designation of Ms. Castro-Lopez as Student's educational representative, the Los Angeles County Superior Court Juvenile Court (Juvenile Court) declared Student to be a dependent child of the court under Welfare and Institutions Code section 300. The Juvenile Court ordered formal removal of Student from the Legal Guardian's physical custody.

According to the parties, on January 3, 2006, Juvenile Court placed Student at a residential facility owned and operated by RCS. On January 9, 2006, Student was enrolled at Wilson Middle School, a public school in the District. Ms. Castro-Lopez is an employee of the RCS, which also owns and operates The Rosemary School, an educational NPS. Castro-Lopez unilaterally placed Student at her employer's NPS in about mid-February 2006.²

On February 24, 2006, Student's Legal Guardian signed a document entitled "Parent Designation of Educational Representative (Government Code 7579.5(n))." (Student's exhibit A to Declaration of Megen Brown.) The document purports to assign Legal Guardian's rights:

.... to represent the above named child's educational interests to my designee [Castro-Lopez] until such time as this designation expires or is revoked. All of the child's educational interests will be represented singularly by my designee, who will have the full, complete and sole authority to refer for evaluation and special education services, sign assessment plans and IEP's, request due process hearings, and take any additional actions that are in the best educational interests of the above named child.

² Ms. Castro-Lopez is employed with RCS as a Counseling Team Supervisor. She failed to disclose in the body of the complaint her claimed status as an "educational representative," or that she relocated Student to her employer's NPS.

DISCUSSION AND APPLICABLE LAW

A. Legal Guardian did not have legal authority to assign Student's educational rights to another adult without the approval of the Juvenile Court.

Juvenile court law is generally governed by the California Welfare and Institutions Code (Welf. & Inst. Code). Welf. & Inst. Code section 361(a) provides:

In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child.....

Subdivision (a) of Welf. & Inst. section Code 361 further provides as follows:

An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, "an individual who would have a conflict of interest," means a person having any interests that might restrict or bias his or her ability to make educational decisions....

..... [Paragraphs deleted.]

All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child.

California Rules of Court, Rule 1499, requires the juvenile court to issue both an order limiting a parent's or guardian's right to make educational decisions for a child adjudged a dependent or a ward of the court, and an order appointing a responsible adult as the educational representative of the child at the same time, on one Judicial Council form. Rule 1499 reiterates that the court may not appoint any individual who would have a conflict of interest as defined by Welf. & Inst. Code section 361(a).

California Rules of Court, Rule 24(h)(1), requires the juvenile court to “[t]ake responsibility, with the other juvenile court participants at every stage of the child’s case, to ensure that the child’s educational needs are met, regardless of whether the child is in the custody of a parent or is suitably placed in the custody of the child welfare agency or probation department and regardless of where the child is placed in school.” Subdivision (h)(2) requires the juvenile court to “[p]rovide oversight of the social service and probation agencies to ensure that a child’s educational rights are investigated, reported and monitored.” Subdivision (h)(3) requires that “court reports, case plans, assessments, and permanency plans considered by the court address a child’s educational entitlements and how those entitlements are being satisfied, and contain information to assist the court in deciding whether the right of the parent or guardian to make educational decisions for the child should be limited by the court under Welfare and Institutions Code section 361(a) or 726(b).”

By assigning Student’s educational rights to Ms. Castro-Lopez, Student’s Legal Guardian made a decision to appoint another person as the “responsible adult” with authority to represent Student’s educational interests and to actively participate in and make educational decisions on Student’s behalf. For the duration of the appointment, Legal Guardian’s assignment of educational rights compromised her ability to make independent educational decisions for her ward, and reflected her unwillingness to personally make those decisions. The applicable law provides that the Juvenile Court is required to consider that information and determine whether to limit a parent’s or legal guardian’s authority and appoint another responsible adult, including where “...*the parent or guardian is unwilling or unable to participate in making an educational decision for his or her child, or if other circumstances exist that compromise the ability of the parent or guardian to make educational decisions for the child.* (Welf. & Inst. Code section 358.1.) [Emphasis added.] No evidence has been submitted to demonstrate that Student’s Legal Guardian had the approval of Juvenile Court to appoint another adult as the educational representative for Student.

B. Even if Legal Guardian had the right to assign Student’s educational rights to another adult, she was prohibited from assigning the rights to someone with a conflict of interest.

Assuming arguendo, Student’s Legal Guardian had the authority to assign Student’s educational rights, absent consent from the Juvenile Court, she was prohibited from assigning the rights to someone with a conflict of interest.

Legal Guardian assigned and designated Ms. Castro-Lopez to be the educational representative of her ward, and to stand in her shoes to make educational decisions for Student. Ms. Castro-Lopez has a conflict of interest in that she has moved from a position of objective neutrality, as a counselor in the employ of the company that owns both a residential facility and the educational NPS, into a position where, as the educational representative for Student, her fidelity should be for only that which is in the best interests of one student in the school. In fact, the Designation of Educational Representative that Legal Guardian and Ms. Castro-Lopez signed expressly states that the actions Ms. Castro-

Lopez takes under that authority must be “*in the best educational interests*” of the child. (Student’s exhibit A to Declaration of Megen Brown.) That singular obligation creates more than an appearance of a conflict in interest with the duties Castro-Lopez owes to her employer. By virtue of her employment and duty of loyalty to her employer she has interests that might restrict or bias her ability to make educational decisions for Student. Moreover, Ms. Castro-Lopez has an economic interest in pursuing litigation seeking public funding for Student’s education at Rosemary that would at least indirectly contribute to her salary or inure to her benefit.

An “educational representative” stands in the shoes of the parent or legal guardian as a type of “substitute” or “surrogate” for purposes of the educational rights of the minor. (See 74 Op. Atty Gen. Cal. 213 (1991).) California Government Code section 7579.5 was enacted to provide procedures to govern the appointment of a “surrogate parent” in California. (See also 20 U.S.C. section 1415(b)(2) and 34 CFR § 300.515.) Where a child is adjudicated to be a dependent or ward of the court pursuant to Welf. & Inst. Code section 300, 601, or 602, if the child has no other responsible adult to represent him or her (as appointed by the parent, or by the court under Welf. & Inst. Code section 361), the LEA must ensure the appointment of a surrogate parent. (Govt. Code § 7579.5, subdivision (a)(1).) Government Code section 7579.5, subdivision (n) states: “Nothing in this section may be interpreted to prevent a parent or guardian of an individual with exceptional needs from designating another adult individual to represent the interests of the child for educational and related services.”

Government Code section 7579.5, subdivision (i) provides: “Individuals who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed as a surrogate parent. ‘An individual who would have a conflict of interest,’ for purposes of this section, means a person having any interests that might restrict or bias his or her ability to advocate for all of the services required to ensure that the child has a free appropriate public education.”

Student’s contention that a parent is not bound by the conflict of interest prohibition in subdivision (i) in appointing an educational representative to act in place of the parent pursuant to subdivision (n) is rejected. (See also Letter to Peterson (September 16, 1986, 211 IDELR 410, 211 LRP 8507).)³ Applying the conflict of interest prohibition to a parent’s right to designate an educational representative does not “prevent” the designation of a responsible adult, but limits the qualifications of the person chosen.

District contends that the complaint should also be dismissed on the ground that Castro-Lopez should be viewed as an “advocate,” subject to the conflict of interest

³ The prior Special Education Hearing Office (SEHO) cases cited by Student are not persuasive, and are not binding. (Title 5 California Code of Regulations § 3085.) In *Student v. Colton Joint Unified School District* (1996, SEHO SN 1171-95), the student was not a ward of the court, and the company that owned the residential facility did not own, control or operate the NPS located on the same grounds. In *Student v. San Juan Unified School District* (1996, SEHO SN 156-96), the student was not a ward of the court, and the reasoning is otherwise flawed.

prohibitions of Education Code section 56042. The complaint should be dismissed because Castro-Lopez lacks the requisite standing, as a “parent” substitute for the Legal Guardian, to file a due process complaint on behalf of Student. Therefore, the issues raised by section 56042 need not be reached.

ORDER

Student has failed to establish that Ms. Castro-Lopez has legal standing to file a due process complaint on behalf of Student. The complaint is therefore dismissed without prejudice.

Dated: May 9, 2006

DEIDRE L. JOHNSON
Administrative Law Judge
Special Education Division
Office of Administrative Hearings