

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN LUIS COASTAL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009100155

ORDER GRANTING MOTION TO
DISMISS

On October 05, 2009, Student filed a Request for Due Process Hearing (complaint), with the Office of Administrative Hearings (OAH), naming San Luis Coastal Unified School District (District) as the respondent.

On October 17, 2009 District filed a Motion to Dismiss/Request for Dismissal, alleging that there is no factual dispute and that the allegation in the claim cannot form the basis for a denial of FAPE.

On October 21, 2009 Student filed an opposition to the request for dismissal.

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.)

Right to record an IEP meeting

In considering the educational rights of students and parents, the legislature made clear that despite Penal Code section 632, a parent or local educational agency (LEA) has the right to record electronically the proceeding of IEP team meeting on an audiotape recorder. That request needs to be made 24 hours prior to the meeting and if the parent objects or refuses to attend the meeting because it will be tape recorded, the meeting will not be recorded. (Ed Code §56341.1 (g)(1)).

Definition of Parent

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. 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 decision for the child. (Ed Code §56028 (b)(1)).

Jurisdiction

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.)

Family Law / custody issues

OAH does not have jurisdiction to entertain claims by a person who does not hold the Student’s education rights. In that same vein, OAH cannot resolve a custody issue or determine the holder of educational rights, that request is better suited for a Family Court.

DISCUSSION

In the present matter, Student, via her Mother, contends that the District denied her Mother the right to electronically audio record the IEP meetings pursuant to the California Education Code. In actuality, the father was the person who did not want the recording to take place and the District made the decision that the meeting would not be recorded.

In application of the authority cited above, Student seeks a remedy from District that she be provided the ability to record the meetings. According to the District and the limited jurisdiction of the OAH, Student’s mother would have to provide proof that she was the only holder of education rights to Student and then would be entitled to stand before this Court and ask for enforcement of her remedy, although the District would likely not fight such a request.

Without a clear determination about who holds the educational rights, both biological parents are deemed to be holders of the educational rights and the statute governing recording of those rights, simply gives “parent” the right. However, if one parent disagrees with another about recording, the acquiescence to the recording becomes equivocal because

it is no longer, one hundred percent of “parent” requesting the right to record the IEP meeting. As such, since the parents could not agree to provide a united front on how to use the right to electronically record the IEP meeting, the District was left with the only option available, to not record the meeting, as if it had requested the right to record itself and parent had refused.

This is further supported by the way that the legislature wrote the specific code subsection concerning electronic recordings at IEP meetings, because it grants parent that right to record upon notice with no restriction, but only allows District to record if parent acquiesces. Surely, the legislative intent was to ensure that parents attended IEP meetings and did not refuse to attend simply because the meeting was being recorded, thereby impeding their rights. The recording of the IEP is a right for a parent and a privilege for a District.

Nevertheless, the legislature did not address the issue of a separated family, except for the definition of “parent” within this section of the education code and that was to say that if there is more than one, they act as one. Thus, if one does not consent, they are both deemed to have not consented. To produce a different result would require that the District choose between two or more family members who hold equal educational rights.

OAH does not have jurisdiction to hear this matter without a definitive showing that Mother holds the education rights unequivocally. Mother’s statement that she has primary custody is not specific enough to deem her to be the holder of educational rights. That is a decision that must be made in a Family court setting. While this Court can empathize with the mother’s frustration, the District cannot, nor should it, insert itself into private family matters.

ORDER

GOOD CAUSE APPEARING, District’s Motion to Dismiss Student’s complaint is granted without prejudice to re-file upon a showing that Mother holds education rights. The matter is dismissed.

IT IS SO ORDERED.

Dated: October 22, 2009

/s/

TRINA A. HIRSIG
Administrative Law Judge
Office of Administrative Hearings