

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016030326

ORDER DENYING MOTION TO  
DISMISS

On March 4, 2016, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming San Francisco Unified School District.

On March 8, 2016, San Francisco filed a Motion to Dismiss, alleging that Student's counsel is not Student's educational rights holder and therefore lacks standing. On March 14, 2016, Student filed a response.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to a public agency involved in any decisions regarding the student. (Ed. Code, § 56501, subd. (a).) OAH does not have jurisdiction to entertain a complaint filed by an individual who does not meet the definition of "parent" and therefore does not hold the student's educational rights.

The definition of "parent" under the governing federal and state statutes and regulations is broad and includes many individuals. This is to ensure that children's rights are protected and not defeated because of an unusual parenting situation. Pursuant to the IDEA, the term "parent" means: a natural, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent with whom the child lives, or an individual who is legally responsible for the child's welfare; or an individual assigned to be a surrogate parent pursuant to title 20 United States Code section 1415 (b)(2). (20. U.S.C. § 1401(23); 34 C.F.R. § 300.30.<sup>1</sup>)

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<sup>1</sup> All references to the Code of Federal Regulations are to the 2006 version.

The state definition of parent for special education purposes is largely analogous to the federal definition. California defines “parent” as: a biological or adoptive parent; a foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order; a guardian authorized to act as the child's parent or to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Section 361 of the Welfare and Institutions Code; an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed pursuant to Section 7579.5 of the Government Code. (Ed. Code, § 56028, subd. (a).)

When more than one party qualifies as a parent pursuant to these definitions, the biological parent is presumed to be the 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, subd. (b)(1).) If a judicial decree or order identifies a specific person to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person shall be determined to be the “parent.” (34 C.F.R. § 300.30(b)(2); Ed. Code, § 56028, subd. (b)(2).)

## DISCUSSION

San Francisco contends that the complaint should be dismissed because Student’s counsel is not Student’s educational rights holder and therefore lacks standing. The San Francisco Superior Court order attached to the complaint appoints Student’s counsel as Student’s attorney and guardian ad litem and confers certain rights and responsibilities on counsel but does not, San Francisco contends, transfer Student’s educational rights. San Francisco asserts that the complaint identifies Student’s mother as the educational rights holder, and there is no evidence that Mother is the petitioner in, or has authorized the filing of, this due process matter.

Student’s response indicates that Mother is the educational rights holder and was in the hospital when the complaint was filed. Mother’s declaration, attached to Student’s response, affirms she is the educational rights holder and was in the hospital on or about March 3, 2016, when she learned of San Francisco’s plan to transfer Student to a new school. Mother agrees with and joins in this due process matter and authorizes Student’s counsel to represent her in this matter.

The parties do not dispute that Mother is the educational rights holder. Although she did not file the complaint in this matter, she was hospitalized at the time, has now joined this action, and has authorized Student’s counsel to pursue this action on her behalf. In application of the authority cited above, OAH retains jurisdiction of this matter because Student’s Mother is now a petitioner and has standing to pursue the case.

ORDER

San Francisco's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: March 21, 2016

DocuSigned by:

*Lisa Lunsford*

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LISA LUNSFORD

Administrative Law Judge

Office of Administrative Hearings