BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020060006

ORDER DENYING MOTION TO DISQUALIFY DISTRICT'S COUNSEL FOR LACK OF JURISDICTION

JULY 16, 2020

On July 8, 2020, the Office of Administrative Hearings, referred to as OAH, received a Motion to Disqualify Counsel for Compton Unified District on the basis of an alleged conflict of interest under the California Rules of Professional Conduct. On July 13, 2020, Compton submitted an Opposition and Revised Opposition to Student's Motion to Disqualify.

FACTUAL AND PROCEDURAL BACKGROUND

On January 31, 2018, Parent on behalf of Student, referred to as Student, filed a request for a due process hearing against Compton Unified School District. OAH

designated the matter OAH Case Number 2018020027, referred to in this order as Case One. Learning Rights Law Center represented Student in Case One, with attorney Kyra Clipper as lead counsel. On March 27, 2018, the parties resolved the matter through a written settlement agreement.

During the pendency of Case One, from January 31, 2018, through March 27, 2018, attorneys Ines Kuperschmit and Rodolfo Estrada were employed by Learning Rights Law Center. Ms. Kuperschmit served as the Director of Litigation at Learning Rights from 2006 to 2014, and as Co-executive Director from August 2014 through October of 2018. In her capacity as Co-executive Director, Ms. Kuperschmit primarily handled the business operations of the law firm while overseeing the entire operation, including the litigation department. Her responsibilities occasionally included supervising intakes of potential clients and referring promising cases to a colleague, who opened the case. The parties agree that during the pendency of Case One, Ms. Kuperschmit managed the staff at Learning Rights Law Center, including Ms. Clipper.

Mr. Estrada also worked for Learning Rights during the pendency of Case One. Mr. Estrada served as the Program Director and Instructor for the program Training Individuals for Grassroots Education Reform, referred to as Tiger. He subsequently served as the Director of Community Engagement and Policy for the law firm. Mr. Estrada believes that Parent may have been enrolled in the Tiger program, as Parent's name is vaguely familiar to him. Mr. Estrada did not advise Parent on Case One. Mr. Estrada did not work in the litigation department of Learning Rights, although he occasionally provided or supervised intakes of potential clients during community intake events.

In November of 2019, Mr. Kuperschmit took the position of Partner overseeing the Special Education Practice Group at Olivarez Madruga Lemieux O'Neill LLP, which is counsel for Compton Unified School District. On April 9, 2020, Mr. Estrada joined Olivarez Madruga Lemieux O'Neill LLP as a Senior Associate, under the supervision of Ms. Kuperschmit.

On May 29, 2020, OAH received a request for a due process hearing from Parent on behalf of Student, naming Compton Unified School District. OAH designated the matter OAH Case Number 2020060006, referred to in this order as Case Two. Case Two included an issue alleging that Compton failed to implement the Settlement Agreement in Case One. On June 4, 2020, OAH received a Notice of Representation from Compton naming attorneys Ines Kuperschmit and Rodolfo Estrada from the law firm Olivarez Madruga Lemieux O'Neill, LLP as counsel for Compton on the matter. The Notice of Representation was signed by Ms. Kuperschmit. On June 8, 2020, OAH received a response to Student's complaint in Case Two, signed by Ms. Kuperschmit. Mr. Estrada worked with Ms. Kuperschmit in preparing and filing the response on behalf of Compton.

On June 8, 2020, counsel for Student, Ms. Clipper, informed Ms. Kuperschmit and Mr. Estrada that Student believed the law firm Olivarez Madruga Lemieux O'Neill, LLP, should be conflicted out of Case Two under California Rule of Professional Conduct 1.9. Ms. Kuperschmit and Mr. Estrada did not respond. On July 1, 2020, Ms. Clipper followed up with Ms. Kuperschmit and Mr. Estrada. Ms. Kuperschmit decided that another attorney in their office would handle the matter. On July 2, 2020, a legal assistant asked Ms. Kuperschmit if the matter would be handled by "Brigitte." On July 6, 2020, OAH received a Notice of Representation on behalf of Compton naming Brigitte Kay from the

law firm Olivarez Madruga Lemieux O'Neill, LLP as counsel for Compton on the matter. Ms. Kay is an associate attorney with the firm.

On July 6, 2020, Ms. Clipper once again emailed Ms. Kuperschmit and Mr. Estrada regarding the alleged conflict, and requested information about whether the law firm had undertaken adequate screening procedures once they became aware of the conflict. Ms. Kuperschmit and Mr. Estrada did not respond, and Ms. Clipper filed the Motion to Disqualify Olivarez Madruga Lemieux O'Neill, LLP as District's counsel in Case Two on July 8, 2020. In its Opposition to Student's Motion, Compton alleges that it promptly and effectively screened the matter from Ms. Kuperschmit and Mr. Estrada, pending resolution of the Motion.

APPLICABLE LAW

Under California Rule of professional conduct 1.9:

> (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed written consent.
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> (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
>
> (1) whose interests are materially adverse to that person; and
>
> (2) about whom the lawyer had acquired information protected by Business and Professions Code section 6068,

subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.

The State Bar of California regulates the ethical conduct of attorneys and compliance with the California Rules of Professional Conduct. Anyone may file a complaint. The Office of Chief Trial Counsel may investigate complaints alleging a failure to comply with California Rules of professional conduct, and may recommend disciplinary action, if warranted.

California Code of Civil Procedure section 128(a)(5) grants California State Courts the authority to take actions to ensure the furtherance of justice in proceedings before such courts.

The Office of Administrative hearings is a quasi-judicial tribune that hears administrative disputes. OAH, Special Education Division, has jurisdiction only over claims alleging the Individuals with Disabilities Education Act or California special education laws were violated. The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," 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 free appropriate public education 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 School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

Student alleges that OAH has the jurisdiction to consider his Motion to Disqualify District's Counsel pursuant to California Code of Civil Procedure section128(a)(5). OAH is a quasi-judicial tribune with limited jurisdiction. Section 128(a)(5) of the California Code of Civil Procedure does not apply to OAH for the purposes of disqualifying an attorney. As such, OAH does not have jurisdiction to grant Student's Motion to Disqualify the law firm of Olivarez Madruga Lemieux O'Neill, LLP as District's counsel.

ORDER

1. Student's Motion to Disqualify District's Counsel is denied due to lack of jurisdiction.
2. Nothing in this Order prohibits Student from requesting a continuance in Case Two if he brings the issue of Compton's compliance with the California Rules of Professional Conduct before the California State Bar or a court of competent jurisdiction.

IT IS SO ORDERED.

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Administrative Law Judge

Office of Administrative Hearings