BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017080408 ORDER ON REQUEST TO PROCEED IN ABSENCE OF EDUCATIONAL RIGHTS HOLDER; SETTING ORDER TO SHOW CAUSE RE DISMISSAL, WITHOUT PREJUDICE, FOR LACK OF JURISDICTION

On August 3, 2017, Student filed a request for due process and a motion to proceed with this due process hearing without an educational rights holder. On August 8, 2017, District opposed. On August 9, 2017, Student replied. On August 11, 2017, District filed a further opposition.

APPLICABLE LAW

Pursuant to California Education Code section 5650, subdivision (a), due process hearing rights extend to the parent or guardian, as defined in section 56028. "Parent" includes a surrogate parent who has been appointed for children who are wards of the court or for whom no parent can be located, pursuant to section 7579.5 or 7579.6 of the Government Code. (Education Code, §56028, subd.(5).)

Government Code section 7579.5 empowers a local educational agency to appoint surrogate parents under defined circumstances. Government Code section 7579.6 empowers a court to appoint surrogate parents under defined circumstances.

Pursuant to California Education Code section 56501, subdivision (a), exceptions may apply to appointments made by local educational agencies under Government Code section 7579.5, under certain circumstances. These exceptions, however, do not apply to court appointments made under Government Code section 7579.6.

Thus, due process hearing rights may also extend to the pupil him or herself, if the pupil is a ward or dependent of the court for whom no parent or guardian can be identified or located, and the due process hearing officer determines that either the local educational agency has failed to appoint a surrogate parent as required by section 7579.5 of the Government Code, or that the surrogate parent appointed by the local educational agency does not meet the criteria set forth in section (f) of section 7579.5 of the Government Code.

Subsection (f) of section 7579.5 of the Government Code states that the surrogate parent shall comply with federal and state law pertaining to the confidentiality of student

records and information and shall use discretion in the necessary sharing of the information with appropriate persons for the purpose of furthering the interests of the child.

Subsection (d) of section 7579.5 of the Government Code further states that the surrogate parent is required to meet with the child at least one time.

DISCUSSION

The parties' arguments have evolved throughout the course of this motion, opposition, reply and further opposition, as each party presented additional facts and documents in their subsequent filings that altered the original procedural posture.

On August 3, 2017, Student's original motion and attachments presented a factual ambiguity as to whether a person named Christine Lamb had ever been appointed by either District or a court, as Student's surrogate parent, which would have rendered her the educational rights holder. Student's original motion attached court filings and records of communications pursuant to which Ms. Lamb's status as surrogate parent appeared, at best, unclear. Ms. Lamb had appeared at a September 26, 2016 individualized educational program team meeting as Student's surrogate parent and had signed it on Student's behalf. However, Student could locate no appointment documents. And, Ms. Lamb's personal understanding was that she was not Student's surrogate parent, but had merely been asked by an unidentified entity, under unidentified auspices, to go to the IEP meeting and "check it for compliance." Student therefore sought a finding from the hearing officer that he had the right to proceed to due process on his own behalf and in the absence of an educational rights holder, pursuant to Education Code section 56501, subdivision (a) because District had never appointed a surrogate parent. Alternatively, Student argued that even if appointed, Ms. Lamb had never met Student and therefore did not qualify to serve as his surrogate parent. Thus, Student argued that pursuant to California Education Code section 56501, subdivision (a), an exception to the appointment applied, and due process hearing rights should extend to him, because Ms. Lamb was not qualified.

On August 8, 2017, District filed an opposition supported by evidence that Ms. Lamb was indeed appointed as Student's surrogate parent, first by District on or about August 31, 2016, and then by a Juvenile Dependency Court Order dated November 4, 2016, designating her as Student's educational rights holder.

On August 9, 2017, in reply to District's opposition, Student attached further information and a declaration from Ms. Lamb. Ms. Lamb had indeed met with Student at the September 26, 2016 IEP. District had requested her to, and she did participate at that IEP. However she did not understand herself to be his surrogate parent and did not wish to serve in that capacity. Ms. Lamb swore in her declaration that she had medical conditions that disabled her from serving.

Student's reply avers that denying Student the right to proceed on his own behalf violates public policy, in that Ms. Lamb did not fulfill all the duties of her juvenile court November 4, 2016 appointment documents, including meeting with a social worker and

determining if Student's educational needs were met. Student's reply alternatively argues that this case should remain open while Student challenges, in juvenile court, Ms. Lamb's appropriateness to serve as his surrogate parent, and while Student seeks a court order appointing another surrogate.

On August 11, 2017, District filed a further opposition, that reiterates the arguments made in its original opposition. District argues that Ms. Lamb was appointed as Student's surrogate parent by the Juvenile Court and that requests for relief pertaining to her service should be directed to the court and not OAH.[1]

Pursuant to California Education Code section 5650, subdivision (a), due process hearing rights extend to the parent, not the student, when there is a person who meets the definition. Ms. Lamb meets the definition of "parent" in section 56028, subdivision (5) of a surrogate parent who has been appointed by a court pursuant to section 7579.6 of the Government Code.

None of the exceptions apply, that would permit Student to proceed on his own behalf. First and foremost, the exceptions stated in California Education Code section 56501, subdivision (a) apply only to District and not court appointments. Student cites no authority empowering OAH to modify or alter the parties' postures that were created by a court appointment of a surrogate.

Secondly, the cited exceptions to District appointments do not apply. They require a hearing officer to determine that either the local educational agency has failed to appoint a surrogate parent, or that the surrogate parent appointed by the local educational agency does not meet the criteria set forth in section (f) of section 7579.5 of the Government Code. Neither is the case here. District appointed Ms. Lamb on August 31, 2016, and no information established that Ms. Lamb failed to adhere to the qualifications in subsection (f) of section 7579.5 of the Government Code pertaining to maintaining confidentiality.[2]

The IDEA's "primary goal is 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services....' " *J.L. v. Mercer Island Sch. Dist.*, 592 F.3d 938, 947 (9th Cir. 2010) (quoting 20 U.S.C. § 1400(d)(1)(A)). The evidence presented by both parties supports a

[1] District did not file a motion to dismiss. Its opposition papers nevertheless argue that the matter should be dismissed for lack of jurisdiction.

[2] Student's other argument, that Ms. Lamb did not meet with Student, turns out to have not been the case. She did meet with him. Moreover, although meeting with the Student is a requirement of surrogacy per subsection (d) of section 7579.5 of the Government Code, it is not one of the "qualifications" required by subsection (f) that would, in its absence, enable a hearing officer to invalidate the appointment under California Education Code section 56501, subdivision (a). Student's final argument, that Ms. Lamb violated the terms of her court appointment, may be meritorious. But there is no authority that OAH may consider that to invalidate the court's order appointing her.

finding that Ms. Lamb did not understand the nature of the appointment and is unwilling and unable to serve in that capacity.

Student requests OAH to hold this matter open for ten days to allow him to take this matter up with the Dependency Court to appoint a new surrogate. This request is in line with the primary goal of the IDEA and results in no prejudice to District. Accordingly, a telephonic hearing is hereby set for September 1, 2017 at 10:00 a.m., at which time Student's counsel shall show cause, why this matter should not be dismissed for lack of jurisdiction.

Student is ordered to show cause, why the above-captioned case should not be dismissed for lack of jurisdiction. **Student shall file a written response with OAH by no later than 5:00 p.m. on August 30, 2017 setting forth Student's efforts to have the court appoint a different surrogate; District may, but is not required to, file a response on or before 5:00 p.m. on August 31, 2017.**

Both parties are ordered to appear telephonically on September 1, 2017, at 10:00 a.m. OAH will initiate the call. If Student fails to appear for the OSC hearing, then Student's due process hearing request will be dismissed for lack of jurisdiction. If cause not to dismiss is established, all dates will remain on calendar as scheduled

ORDER

1. Student shall file a written response with OAH by no later than 5:00 p.m. on August 30, 2017 setting forth Student's efforts to have the court appoint a different surrogate.

2. District may, but is not required to, file a response on or before 5:00 p.m. on August 31, 2017 .

3. Both parties are ordered to appear telephonically on September 1, 2017, at 10:00 a.m. OAH will initiate the call.

4. If Student fails to appear for the OSC hearing, then Student's due process hearing request will be dismissed for lack of jurisdiction.

5. If cause not to dismiss is established, all dates will remain on calendar as scheduled.

DATE: August 21, 2017

DocuSigned by:
June Lehrman
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JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings