BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016100772
v.	ORDER REQUIRING ATTORNEY TO APPEAR AT HEARING
ELK GROVE UNIFIED SCHOOL DISTRICT.	

Pursuant to the prehearing conference order herein dated November 14, 2016, the parties were ordered to brief the issue of whether Student could be represented at hearing by James D. Peters, III, a non-attorney, paralegal advocate instead of Nicole Hodge Amey, the attorney for whom he works as a paralegal. The parties have timely filed their briefs.

Student contends that 34 Code of Federal Regulations part 300.512 (a) (2006)[1] provides that non-attorneys who have special knowledge or training with respect to the problems of children with disabilities may appear at due process hearings without the presence of an attorney. Student contends that Mr. Peters has such special knowledge. Student further contends that California law permits non-attorneys to represent parties in administrative matters when the law expressly permits it. Student also asserts that there is no California legal authority that excludes a non-attorney with special knowledge or training from representing a party in a special education due process hearing, even if the non-attorney is a paralegal. Mr. Peters further asserts that he has previously represented Students in due process hearings before OAH as a paralegal without an attorney present, and that Parent has requested Mr. Peters' services as a lay representative.

Elk Grove Unified School District contends that Mr. Peters is not merely a non-attorney advocate, but that he has also specifically represented that he is acting as a paralegal in this case, which is a role governed by Business and Professions Code section 6450. As such, he must work under the direction and supervision of an attorney, and may not provide legal advice or engage in the unlicensed practice of law. District contends that, unless Ms. Amey is present through the hearing, Mr. Peters will be violating section 6450 and engaging in the unlicensed practice of law.

[1] All references to the Code of Federal Regulations are to the 2006 edition.

APPLICABLE LAW

Title 34 Code of Federal Regulations part 300.512 (a), permits a party to a special education due process hearing to be "accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, *except* that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law." (Emphasis added.) California Education Code section 56505, subdivision (e)(1), provides that a party to the special education due process hearing has "the right to be accompanied and advised by counsel and by individuals with special knowledge or training relating the problems of individuals with exceptional needs." Neither of these provisions addresses the role of paralegals in this process, but 34 Code of Federal Regulations part 300.512(a), provides that issue is governed by state law. In this case, state law is Business and Professions Code section 6450. Section 6450, subdivision (a), provides that a paralegal who performs substantial legal work must do so under the direction and supervision of a licensed attorney. Section 6450 also expressly prohibits a paralegal from providing legal advice, from representing a client in court; and from engaging in the unlicensed practice of law. (Bus. & Prof. Code section 6450, subds (b)(1), (b)(2) and (b)(5).) A paralegal may only represent clients before a state administrative agency if such is permitted by statute, court rule or administrative rule or regulation. (Bus. & Prof. Code section 6450, subd. (a).) There is no such statute expressly permitting paralegals to represent clients in special education due process hearings.

DISCUSSION

The Student's due process hearing request (Complaint) was filed by attorney Nicole Hodge Amey, and Mr. Peters was identified on the cover page as a paralegal. The Complaint specifically alleges at page 2 of the Complaint, that Parent has retained Ms. Amey and Mr. Peters, of Ms. Amey's law office, to represent Student. Ms. Amey is, therefore, the attorney of record for this case.

Student cites no statute, court rule, or administrative rule or regulation that permits him, in his capacity as a paralegal, to represent clients in a due process hearing before OAH instead of the attorney identified as representing the Student. Further, representing a party in a due process hearing instead of the attorney of record, which involves questioning witnesses, making legal arguments and objections, presenting evidence, and applying legal procedures and strategies, profoundly affects the due process rights of Student and Parents, constitutes the performance of substantial legal work, and also constitutes the practice of law. Whether, as Student contends, Mr. Peters has previously represented students and parents in due process hearings as a paralegal without an attorney present, and thereby may have previously unlawfully engaged in the unauthorized practice of law, is of no moment. Both

Ms. Amey and Mr. Peters are required to comply with the Business and Professions Code in this matter. Therefore Ms. Amey must appear and represent Student at all days of the due process hearing .

IT IS SO ORDERED.

DATE: November 17, 2016

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Marian H. Tully
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MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings