

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014030894
v.	
TWIN RIVERS UNIFIED SCHOOL DISTRICT,	
TWIN RIVERS UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2014050203
v.	
PARENT ON BEHALF OF STUDENT.	ORDER GRANTING MOTION TO DISMISS STUDENT’S CASE, AND ORDER DISMISSING CONSOLIDATED MATTER IN ITS ENTIRETY

On March 24, 2014, Parent on Behalf of Student (Student) filed with the Office of Administrative Hearings a Request for Due Process Hearing (Student’s complaint), naming Twin Rivers Unified School District (Twin Rivers) as respondent. On May 5, 2014, Twin Rivers filed a Request for Due Process Hearing (Twin Rivers’ complaint) naming Student as respondent. On May 21, 2014, OAH granted Twin Rivers’ motion to consolidate.

The undersigned administrative law judge convened a telephonic prehearing conference with the parties on May 23, 2014, and the consolidated matter proceeded to hearing on June 3, 4, 5, and 9, 2014. The matter was continued to June 24, 2014, to allow the parties an opportunity to submit written closing arguments. The parties timely filed their closing arguments and the record was closed on June 24, 2014, and submitted for Decision.

On June 24, 2014, Twin Rivers filed a Motion to Dismiss Student’s complaint based on a lack of jurisdiction, lack of standing and unclean hands. The motion is supported by a declaration under penalty of perjury of attorney Kyle Raney, as well as orders from the Sacramento County Juvenile Court (Juvenile Court) dated May 16, 2014, limiting Parent’s educational rights and referring Student to the local educational agency for appointment of a surrogate parent.

Although OAH received no response to the Motion to Dismiss from Student, on June 24, 2014, Student filed a letter regarding child protective services proceedings and also attached the Juvenile Court order limiting Parent’s education rights, with a certificate of

mailing from the Juvenile Court dated June 18, 2014, and a notarized power of attorney dated August 13, 2009, and updated May 17, 2012, wherein Parent designated grandparent to authorize educational services for Student.

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.) A parent or public agency 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); Cal. Code Regs., tit. 5, § 3082 [it is the parent or the public agency which may initiate a due process hearing]; 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.)

Definition of Parent

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. § 300.30.¹)

California state law, specifically Education Code section 56028, which defines “parent” for special education matters, is largely analogous to the federal definition of the term. 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

¹ All references to the Code of Federal Regulations are to the 2006 version.

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 this definition, 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 or persons shall be determined to be the “parent” for purposes of this section. (34 C.F.R. § 300.30(b)(2); Ed. Code, § 56028, subd. (b)(2).)

Standing to Pursue a Request for Due Process

Special education due process hearing procedures extend to the parent as defined in Education Code section 56028, an emancipated minor, a student who is a ward or dependent of the court or for whom no parent can be identified or located when the hearing officer determines that either the local educational agency has failed to appoint a surrogate parent as required or the surrogate does not meet the legal criteria, and to a public agency involved in any decisions regarding the student. (Ed. Code, § 56501, subd. (a).) “The appointment of a surrogate parent after a hearing has been requested by the pupil shall not be cause for dismissal of the hearing request.” (*Id.*)

OAH does not have jurisdiction to entertain a complaint filed by a person who does not hold the student’s educational rights, or a complaint filed by a school district which names a person who does not qualify as a party. OAH may dismiss a matter in its entirety where it is evident from the face of the complaint that the alleged issues fall outside of OAH jurisdiction or the pleaded facts cannot sustain a claim. Such circumstances may include, among other things, complaints that assert civil rights claims or claims seeking enforcement of a settlement agreement, or complaints naming an entity that cannot be legally responsible for providing special education or related services under the facts alleged, or complaints brought by or naming an individual without legal standing to assert a student’s educational rights.

The Doctrine of Mootness

Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) However, mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) A case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 201, 214.) An exception to the

mootness doctrine is made if a case presents a potentially recurring issue of public importance. (*DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58.)

Jurisdiction of the Juvenile Court

The superior court exercises the jurisdiction conferred by the juvenile court law and when doing so is known as the Juvenile Court. (Welf. & Inst. Code, § 245.) The juvenile court may direct all such orders to the parent of a child who is subject to juvenile dependency proceedings as the court deems necessary and proper for the best interests of the child, including orders concerning the care, supervision, custody, conduct, maintenance, education, medical treatment and support of the child. (Welf. & Inst. Code, § 245.5.)

When the juvenile court, acting under the doctrine of *parens patriae*, acquires jurisdiction and properly assumes custody of the minor, its jurisdiction is paramount. (*In re William T.* (1985) 172 Cal.App.3d 790, 797.) As announced in *In re Syson* (1960) 184 Cal.App.2d 111, 117, “While the juvenile court, on adequate facts, retains jurisdiction and stays within the bounds of its legal power, no other court has the right to interfere with its supervision, for the state, of the children involved.” (*In re William T.*, *supra*, at 798.)

The presiding judge of the juvenile court may assign cases to be heard by a referee. Aside from matters involving double jeopardy, the referee shall have the same powers as a judge of the juvenile court. (Welf. & Inst. Code, § 248, subd. (a).) All orders by a referee, aside from orders removing a child from his home, shall become immediately effective subject to a right of review, and shall continue in full force and effect until vacated or modified upon rehearing by order of a judge of the juvenile court. (Welf. & Inst. Code, § 250.) Any party may file a petition for rehearing of an order by a referee within ten days of service of the order. (Welf. & Inst. Code, § 252; *In re Clifford C.* (1997) 15 Cal.4th 1085 [where a referee’s order can become effective without approval of a judge, it becomes final 10 calendar days after service unless a party petitions for rehearing].)

LIMITING EDUCATIONAL RIGHTS AND APPOINTMENT OF SURROGATE

A referee of the juvenile court has the authority to limit the educational rights of a parent pursuant to Welfare and Institutions Code section 361, subdivision (a). Any interested person may petition the juvenile court, upon grounds of changed circumstances or new evidence, for a modification of court order, including an order limiting educational rights. (Welf. & Inst. Code, § 388.) If it appears that the best interests of the child may be promoted by the proposed change in order, the juvenile court shall order that a hearing be set, cause notice to be given to all parties, and issue an order after hearing on form JV-184. (Welf. & Inst. Code, § 388 subds. (a)(1), (d); Cal. Rule of Court, rule 5.570.)

Upon limiting educational rights, the juvenile court shall appoint a responsible adult to make educational decisions regarding the dependent child, or, if it cannot identify a responsible adult, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Government Code section 7579.5. (Welf. &

Inst. Code, § 361, subd. (a)(1) & (3).) Upon limiting a parent's educational rights, the court issues a JV-535, *Order Limiting Educational Rights*. The court shall order that the JV-535 and the JV-536, *Local Educational Agency Response to JV-535-Appointment of Surrogate Parent -535*, be served by first-class mail on the local educational agency no later than five court days from the date the order is signed. (Cal. Rules of Court, rule 5.650 (a) & (d).)

The local educational agency must ensure the rights of the student are protected when the child is a ward of the state including reasonable efforts to ensure the assignment of an individual to act as a surrogate within 30 days of determination of such need, or upon notification of its obligation to appoint a surrogate pursuant to juvenile court order. (20 U.S.C. § 1415(b)(2); 34 C.F.R. § 300.519 (a), (b), (h); Cal. Rules of Court, rule 5.650(d).) "Ward of the state" includes a child in the custody of the public child welfare agency, commonly known as a dependent child of the juvenile court. (20 U.S.C. § 1401 (36); 34 C.F.R. § 300.45.) The local educational agency must notify the court of its appointment of an educational surrogate within five court days of the appointment. (Cal. Rules of Court, rule 5.650(d)(3)(A).) If it does not appoint a surrogate within 30 days, the local educational agency must notify the court of this fact within the next five court days and inform the court of its continuing reasonable efforts. (Cal. Rules of Court, rule 5.650(d)(3)(B).)

A surrogate parent shall serve as the child's parent and shall have the rights relative to the child's education that a parent has under the IDEA. The surrogate parent may represent the child in matters relating to special education and related services, including the identification, assessment, instructional planning and development, educational placement, reviewing and revising the individualized education program, and in all other matters relating to the provision of a free appropriate public education of the child. This representation shall include the provision of written consent to the individualized education program. (Gov. Code, § 7579.5, subd. (c).)

DISCUSSION

Judicial notice is hereby taken of the juvenile court orders limiting Parent's educational rights and referring Student to Twin Rivers for the appointment of a surrogate. Based upon the juvenile court orders provided by both parties, and the certificate of Juvenile Court mailing submitted by Student, and the declaration of Mr. Raney's, the following facts are determined: (1) the Department of Health and Human Services (Department) filed a JV-180, Petition to Modify Court Orders, with the Juvenile Court on April 22, 2014, seeking an order limiting Parent's educational rights as to Student; (2) Juvenile Court Referee Marlene Hertoghe conducted a hearing on this petition on May 16, 2014, granted Department's petition, issued a JV-535 order limiting Parent's educational rights as to Student, and further ordered the local educational agency to appoint an educational surrogate for Student; (3) on May 21, 2014, Referee Hertoghe signed the JV-184, Order after Hearing on the petition to modify court order; (4) on June 18, 2014, the clerk of the Juvenile Court mailed a copy of the JV-535 to Student; and (5) on June 19, 2014, Twin Rivers' received a copy of the JV-535, JV-180, and JV-184.

Although Parent retained educational rights at the time she filed Student's complaint, by the time of hearing, Parent's educational rights were limited by order of the Juvenile Court as of May 16, 2014. OAH does not have jurisdiction to entertain claims by a person who does not hold education rights, and has no authority to adjudicate a complaint brought by a party who lacked authority to pursue the action.² Student's Parent does not have the legal authority to make educational decisions on Student's behalf. The procedural protections of participating in a due process hearing and receiving a written Decision adjudicating the issues, flows to a party. Twin Rivers' has established that Parent did not have legal standing to prosecute Student's complaint. Accordingly, Twin Rivers' motion to dismiss Student's complaint is granted.

However, OAH equally has no authority to adjudicate Twin Rivers' complaint which specifically named Parent on behalf of Student, and thereby failed to name a proper parent in the action. There are two sides to every special education dispute – the student/parents and the public agency. OAH cannot grant Twin Rivers' requested remedy that it be authorized to implement Student's February 25, 2014 individualized education program without Parent's consent, as Twin Rivers' has established that Parent does not meet the definition of a "parent" under federal and state special education law as of May 16, 2014. In as much as Twin Rivers' asserted a claim against an individual, who at the time of hearing, could not legally consent to the offered IEP, and was not legally entitled to defend against it, its complaint is deemed moot.

As of May 16, 2014, Parent's educational rights were limited by the juvenile court and Twin Rivers was ordered to appoint an educational surrogate for Student. The Juvenile Court did not ensure timely service of its orders limiting educational rights and referring Student for the appointment of a surrogate. Pursuant to California Rules of Court, rule 5.650, the clerk should have provided these orders to Twin Rivers by May 23, 2014, no later than five court days from the date the orders were signed. Twin Rivers received the orders on June 19, 2014, and the clerk placed the orders in the mail addressed to Student on June 18, 2014. As these orders were issued by a juvenile court referee, they became final on or about June 30, 2014, 10 calendar days after service, absent evidence that a party to the juvenile dependency proceedings has petitioned for a rehearing.

Twin Rivers correctly argues that biological parents are presumed to be the legal "parent" for purposes of special education proceedings unless the biological parent lacks the legal authority to make educational decisions for the student. Twin Rivers' analysis that, "because the surrogate was not the individual who initiated and maintained the action on Student's behalf, [Parent] was an incorrectly named party in the suit" is sound, but applies equally to its own filed complaint. Not only was the yet to be appointed educational

² See *Driessen ex rel. B.O. and B.O. v. Lockman* (11th Cir. 2013) nonpub. 518 F. App'x. 809, 61 IDELR 61 [Court of Appeal affirmed federal district court's dismissal of action by mother whose parental rights had been terminated by the time she filed suit; mother was no longer a parent and lacked standing.

surrogate the only party entitled to bring suit on behalf of Student; the surrogate was the only party who could be properly named by Twin Rivers in its complaint at the time of hearing, and the only one to properly defend against such a complaint.

Twin Rivers has yet to appoint an educational surrogate for Student. At the time of hearing, there was no party with legal standing to proceed to hearing on Student's behalf or to defend against the Twin Rivers' complaint. Currently, there is not a legal party entitled to a Decision on the merits as Parent lacked standing to pursue Student's complaint, and Twin Rivers failed to identify a proper party in its complaint.³ In as much as this Order finds that both pending matters must be dismissed for lack of standing and jurisdiction, there is no need to address Twin Rivers' allegation that Parent acted with unclean hands.

ORDER

1. Twin Rivers' motion to dismiss Student's case, OAH Case No. 2014030894, is granted without prejudice.
2. Twin Rivers' case, OAH Case No. 2014050203, is dismissed without prejudice.
3. The consolidated matter is now closed, and no Decision will issue.

³ This ALJ declines, on the unique facts of this case, to determine that Twin Rivers has failed to appoint an educational surrogate such that Student, as a dependent of the Juvenile Court may pursue his own due process hearing and thereby prevent dismissal of this consolidated matter. (Ed. Code, § 56501, subd. (a).) However, it is strongly advised that the educational surrogate carefully review Student's complaint and determine whether to file a new complaint with some or all of Student's original claims or new independent claims. Twin Rivers may renew its complaint should the educational surrogate determine that he or she will not provide consent to the February 2014 IEP offer.

4. Twin Rivers shall provide a copy of this Order to Student's educational surrogate.

5. Twin Rivers shall provide a copy of this Order to the Juvenile Court of Sacramento County to be included in Student's dependency file.

DATE: June 28, 2014

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings