

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

**IN THE MATTER OF:

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT,**

v.

**PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2019080889**

ORDER DENYING MOTION TO DISMISS FATHER AS A PARTY

On September 11, 2019, Mother filed with the Office of Administrative Hearings, referred to as OAH, a notice of insufficiency which included a motion to dismiss Student's father as a party to this matter. On September 12, 2019, OAH issued an order finding the complaint sufficient and allowing the parties three days to respond to the motion to dismiss. Father filed an objection to the motion to dismiss on September 16, 2019. OAH did not receive a response from Manhattan Beach Unified School District.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), referred to as the IDEA, 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.) 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.) OAH does not, however, entertain summary judgment motions on claims arising under the IDEA that seek a

ruling on the merits of a case. Those claims require findings of fact by the hearing officer at a due process hearing.

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to the public agency involved in any decisions regarding a pupil. (Ed. Code, § 56501, subd. (a).) Education Code section 49061(a)(1) identifies a parent as a biological or adoptive parent of a child. The biological parent, when one or more party is qualified to act as a parent, shall be presumed to be the parent for purposes of making educational decisions for the child. (Ed. Code § 49071(b)(1). If a judicial decree or order identifies a specific person or persons under subsection (a) to act make educational decisions on behalf of the child, that person or persons shall be determined to be "the parent" for purposes of Education Code section 49071.

Here, Mother alleges that Manhattan Beach Unified violated Student's right of privacy by serving the complaint on Father, because he was not specifically named as a "party" to the matter. Father responded that he holds joint legal custody of Student, including the right to make decisions relating to Student's education. Additionally, both parents participated in a prehearing conference with the undersigned Administrative Law Judge, referred to as ALJ, on September 6, 2019. They each represented on the record that they held joint custody and decision making rights for Student.

Student is the named party to this action, by and through his parent or parents or legal educational rights holder. Mother's motion seeks a ruling on the merits of the case, namely who holds decision making authority for Student's educational rights. That is an issue for the ALJ to determine at hearing after each party presents its evidence.

Accordingly, the motion is denied. Both Parents shall have the right to participate in this matter and shall be served with all documents filed with OAH by any party, or by OAH, unless otherwise ordered. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATED: September 16, 2019

DocuSigned by:
Adrienne L. Krikorian
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Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings