

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CLAREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024080704

ORDER DENYING CLAREMONT UNIFIED SCHOOL
DISTRICT'S MOTION TO DISMISS PENDING THE
PREHEARING CONFERENCE

SEPTEMBER 13, 2024

On August 19, 2024, Student's grandmother on behalf of Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH. Student's complaint named Claremont Unified School District, called Claremont. OAH set the prehearing conference for September 30, 2024.

On September 6, 2024, Claremont filed a Motion to Dismiss, asserting that Student's grandmother lacks standing to bring a due process complaint, because she does not hold Student's educational rights and is not an attorney. Student filed a response in opposition on September 13, 2024.

APPLICABLE LAW

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.) Parents have 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) [parents have 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 parties to a due process proceeding have a right to be “accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities.” (20 U.S.C. § 1415(h)(1); see also Ed. Code, § 56505, subd. (e)(1).) The right to be represented by an attorney and the right to be accompanied and advised by an individual with special knowledge or training does not mean that attorneys and individuals with special knowledge perform the same function. Attorneys are legally authorized to act on behalf of their clients and to practice law.

On September 28, 2017, the attorney general issued an opinion letter which considered whether the Individuals with Disabilities Education Act, the implementing regulations, and/or the California Education Code authorized a party to special

education due process proceedings to be represented by a person that was not an active member of the California State Bar. The attorney general's opinion concluded that these laws did not authorize parties to a special education due process hearing to be represented by a person that is not an active member of the California State Bar in due process hearings. (100 Ops. Cal. Atty. Gen. 19 (2017) 2017 WL 5508459.)

DISCUSSION

In the present matter, Student's complaint was signed and filed by Student's grandmother, and she was designated as the party requesting the due process hearing. The complaint was not signed by either of Student's parents. Moreover, the complaint does not indicate that Student's grandmother holds Student's educational rights or that she is a licensed attorney. Rather, the complaint repeatedly states that Student's grandmother is his "Advocate" and includes additional facts which portray Student's grandmother as Student's lay advocate. (See e.g., *American Title Insurance Co. v. Lacleaw Corp.* (9th Cir. 1988) 861 F.2d 224, 226 [factual assertions in pleadings are considered judicial admissions conclusively binding on the party who made them].) Thus, Student's complaint does not establish that Student's grandmother is authorized to file a due process complaint on Student's behalf.

In his opposition to Claremont's motion to dismiss, Student does not argue that his grandmother is either his attorney or his educational rights holder. Instead, Student argues that his grandmother has specific knowledge of the facts identified in Student's complaint and should be allowed to assist Student's parents at the resolution session convened pursuant to Title 20 United States Code section 1415(f)(B)(i).

Student's grandmother may accompany and advise his parents at the resolution session and at a due process hearing. (20 U.S.C. § 1415(f)(B)(i) and (h)(1); see also Ed.

Code, § 56505, subd. (e)(1). However, because it has not been established that grandmother is an attorney or the holder to Student's educational rights, Student's grandmother cannot represent Student or file a due process complaint on his behalf. The Attorney General's opinion specifically addressed this point, noting that, "parties to special education due process hearings do not have a right to have their legal interests represented by a nonlawyer. In other words, a nonlawyer may not engage in the practice of law in special education due process hearings." (100 Ops. Cal. Atty. Gen. 19, *supra*.)

In addition, Student has not filed any document indicating that Parents have transferred Student's educational rights to grandmother. The Appointment of Personal Representative and Consent for Release of Information filed by Student on September 6, 2024, is insufficient to establish that grandmother holds Student's educational rights.

Therefore, because Student's grandmother does not hold Student's educational rights and is apparently not a licensed attorney, Student's grandmother does not have standing to prosecute a due process complaint on Student's behalf. If Student does not establish by the time of the prehearing conference that grandmother is the holder of Student's educational rights, Student's complaint will be dismissed unless otherwise ordered.

ORDER

Claremont Unified School District's Motion to Dismiss is denied without prejudice pending the prehearing conference.

IT IS SO ORDERED.

Ashok Pathi

Ashok Pathi

Administrative Law Judge

Office of Administrative Hearings