BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,

v.

PARENTS AND CO-EDUCATIONAL RIGHTS HOLDER ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023030716

ORDER DENYING MOTION TO DISQUALIFY

MAY 8, 2023

On May 1, 2023, Parents and Co-Educational Rights Holder on behalf of Student filed with the Office of Administrative Hearings, called OAH, a Notice of Co-Educational Rights Holder. Attached to the Notice, was an Appointment of Co-Educational Rights Holder, signed by Parents on April 3, 2022, that granted Hadassah Lynn Foster joint authority to make educationally related decisions on behalf of Student. Santa Monica-Malibu Unified received the Notice and the Appointment of Co-Educational Rights Holder on May 1, 2023, just prior to the prehearing conference at 1:00 PM that day.

At the May 1, 2023 prehearing conference, Parents and Foster appeared on behalf of Student as co-educational rights holders. It was Foster's first appearance in this matter. At the prehearing conference, Santa Monica-Malibu Unified indicated that it may file a motion to limit Foster's role in the due process hearing, as Foster is not an attorney licensed to practice law in California, and is not permitted to represent Student and Parents in this matter.

On May 4, 2023, Santa Monica-Malibu Unified filed a Motion to Disqualify, requesting Foster be disqualified from representing Parents and Student at the due process hearing. A declaration by Santa Monica-Malibu Unified's attorney was attached in support of the motion. Santa Monica-Malibu Unified relies on a 2017 Opinion by the Attorney General of California who opined that parties are not entitled to lay representation in special education due process hearings. Therefore, Santa Monica-Malibu Unified contends Foster is not permitted to represent Student and Parents at the hearing because Foster is an educational advocate and not licensed to practice law in California.

Student filed a response on May 5, 2023. Student contends, as a co-educational rights holder, Foster is entitled to join Parents in preparation for, and in the presentation of evidence at, the due process hearing. Therefore, Student requests Foster be allowed to call witnesses, introduce evidence, question witnesses, and raise objections.

A parent of a child and the local educational agency involved in a due process hearing request shall have an opportunity for an impartial due process hearing. (20 U.S.C. § 1415(f)(1)(A).) A parent is defined as:

- A biological or adoptive parent of a child;
- A foster parent, unless prohibited by law to serve as a parent;
- A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child;
- 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
- a surrogate parent assigned by a public education agency. (20 U.S.C. § 1401(23); 34 C.F.R. § 300.30; Ed. Code, § 56028.)

Individuals who do not meet the definition of a parent but hold authority to make educationally-related decisions for a student have been granted standing to initiate and participate as a party in special education due process proceedings. (*Amaya v. Chaffey Joint Union High Sch. Dist.*, (C.D.CA, April 28, 2022, Case No. ED CV 20-1903-JFW(SHKx)) 2022 WL 3013181 [A review of OAH case number 2020010259 (August 5, 2020) where the student as an adult, assigned decision-making authority to his aunt and uncle].)

A party to a hearing shall have the 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); 34 C.F.R. § 300.512(a)(1).) A party also has the right to present evidence and confront, cross-examine, and compel the attendance of witnesses. (20 U.S.C. § 1415(h)(2); 34 C.F.R. § 300.512(a)(2).)

Here, Foster is designated by Parents as a co-educational rights holder for Student, to hold joint authority with Parents to make educationally related decisions on behalf of Student. OAH has no authority to invalidate that designation, nor does Santa Monica-Malibu Unified offer any authority as to why OAH cannot recognize Foster as a co-educational rights holder in this matter.

Foster's role is not limited to assisting Parents at a due process hearing. Foster holds broader authority to make decisions regarding all aspects of Student's education. Foster's broad authority to make educationally related decisions for Student grants her standing as a party in this matter. As a party, Foster is entitled to present evidence and confront, cross-examine, and compel the attendance of witnesses. Accordingly, Santa Monica-Malibu Unified's motion to disqualify Foster is denied.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz
Administrative Law Judge
Office of Administrative Hearings