BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020060662

ORDER DENYING MOTION TO DISQUALIFY STUDENT'S COUNSEL FOR LACK OF JURISDICTION

JULY 28, 2020

On July 22, 2020, the Office of Administrative Hearings, referred to as OAH, received a Motion to Disqualify Petitioner's Legal Counsel filed by San Diego Unified School District, naming Student as petitioner. San Diego alleged a conflict of interest under California Rules of Professional Conduct as the basis for the disqualification. Student filed an objection to San Diego's motion on July 28, 2020.

FACTUAL AND PROCEDURAL BACKGROUND

On June 18, 2020, Parent on behalf of Student, filed a request for due process hearing against San Diego Unified School District through legal counsel Meagan Nunez and Kristen Zittlau.

San Diego alleged Ms. Zittlau worked as an attorney for the law firms Dannis Woliver Kelley and Atkinson Andelson Loya Ruud and Romo, between August 2014 to October 2015 and October 2016 to February 2020, each of which has represented San Diego in some capacity. During Ms. Zittlau's employment at Dannis Woliver Kelley, she represented and worked closely with San Diego in special education and student matters. San Diego objected to Ms. Zittlau's representation of Student in the instant matter based the California Rules of Professional Conduct.

APPLICABLE LAW

The California Rules of Professional Conduct 1.9 states:

> (a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed written consent.
>
> (b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client
>
> (1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Business and Professions Code section 6068, subdivision (e) and rules 1.6 and 1.9(c) that is material to the matter;

unless the former client gives informed written consent.

The State Bar of California regulates the ethical conduct of attorneys and compliance with the California Rules of Professional Conduct. Anyone may file a complaint. The Office of Chief Trial Counsel may investigate complaints alleging a failure to comply with the Rules of Professional Conduct, and may recommend disciplinary action, if warranted.

California Code of Civil Procedure section 128 subdivision (a)(5) grants California State Courts the authority to take action to ensure the furtherance of justice in proceedings before such courts.

The Office of Administrative hearings is a quasi-judicial tribunal that hears administrative disputes. OAH, Special Education Division, has jurisdiction only over claims alleging the Individuals with Disabilities Education Act or California special education laws were violated. 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.) A party 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); 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 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 jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

San Diego alleged that OAH has the jurisdiction to consider its Motion to Disqualify Student's Counsel pursuant to Code of Civil Procedure § 128 subdivision (a)(5). OAH is a quasi-judicial tribunal with limited jurisdiction. Section 128 subdivision (a)(5) of the Code of Civil Procedures does not apply to OAH for the purposes of disqualifying an attorney. As such, OAH does not have jurisdiction to grant San Diego's Motion to Disqualify Ms. Zittlau from representing Student in this matter.

ORDER

1. San Diego's Motion to Disqualify Petitioner's Legal Counsel is denied due to lack of jurisdiction.
2. Nothing in this Order prohibits San Diego from requesting a continuance if it brings the issue of Ms. Zittlau's compliance with the California Rules of Professional Conduct before the California State bar or a court of competent jurisdiction.

IT IS SO ORDERED.

DocuSigned by:
Marlo Nisperos
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Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings