BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STANISLAUS UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013050308 ORDER DENYING MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR STUDENT WITHOUT PREJUDICE

On September 16, 2013, a telephonic prehearing conference (PHC) in this matter was held before Administrative Law Judge Deidre L. Johnson (ALJ), Office of Administrative Hearings (OAH). Attorney S. Diane Beall appeared on behalf of the Stanislaus Union School District (District). Attorney Roger A. Greenbaum appeared on behalf of Student and Parents (Student). The PHC was recorded and also addressed the following motion.

MOTION TO WITHDRAW AS STUDENT'S ATTORNEY OF RECORD

On September 13, 2013, at or after the start of a scheduled PHC in this case, Student filed a written request for a continuance of the due process hearing on multiple grounds. District was ordered to file any written opposition by the morning of September 16, 2013, and the PHC was continued to the afternoon of the same date. Later in the afternoon of September 13, 2013, Student filed an amended declaration and motion. On September 14, 2013, Student faxed a superseding motion which was filed by OAH on September 16, 2013. That motion included a motion in the alternative, that if OAH did not grant a continuance, Mr. Greenbaum requested permission to withdraw as Student and Parents' attorney of record. On September 16, 2013, Student filed a "further amended" motion including the alternative motion to withdraw as counsel. District filed an opposition to Student's motion for a continuance that did not address the alternative motion for permission to withdraw as counsel.

In the September 16, 2013 PHC, and in a subsequent Order Following Prehearing Conference Denying Motion for Continuance dated September 17, 2013, the undersigned ALJ denied Student's motion for a continuance.

This order addresses Mr. Greenbaum's alternative request for permission to withdraw as counsel. During the September 16, 2013 PHC, and in this Order, his request to withdraw is denied without prejudice for the reasons set forth below.

APPLICABLE LAW AND DISCUSSION

Method of Withdrawal

California Code of Civil Procedure section 284 provides that the attorney in an action or special proceeding may be changed at any time by one of the following methods:

1. Upon the consent of both client and attorney, filed with the clerk, or entered upon the minutes;

2. Upon the order of the court, upon the application of either client or attorney, after notice from one to the other.

California Rules of Court, Rule 3.1362, subdivisions (a) and (c) provide that a notice of motion and motion to be relieved as counsel under the above statute must be directed to the client, as well as all other parties, and must be accompanied by a declaration in which the attorney states "in general terms and without compromising the confidentiality of the attorney-client relationship why a motion under Code of Civil Procedure section 284, subdivision (2) is brought . . . ," instead of filing a consent under subdivision (1) of the statute. Likewise, Rule of Professional Conduct 3-700, subdivision (A)(1), prohibits a member of the California State Bar from withdrawing from employment in a proceeding before a tribunal without its permission unless a substitution of attorney is filed.

Pursuant to the September 16, 2013, PHC, this matter is now set for hearing on September 24 through 26, 2013. In Mr. Greenbaum's motion in the alternative to withdraw as counsel of record, Counsel set forth in general terms the reasons why he asks this tribunal for permission to withdraw. Counsel represents in his declaration under penalty of perjury that Parents declined to consent to his withdrawal and he is not able to adequately prepare for hearing and represent the interests of Student and Parent due to myriad reasons, including Father's unavailability to help him prepare for hearing for most of the last two months; Father's absence from an agreed upon meeting in early September 2013; and most particularly, Counsel's immersion in another special education due process case before OAH, bearing primary OAH Case Number 2012100242. Counsel represents that he has been "fully engaged" in the preparation for and litigation of the matter in Fresno, "to the point of exhaustion of physical, financial and intellectual resources. . . ." The Fresno hearing was conducted on September 10 through 13, was continued to September 17 through 19, 2013, and may continue thereafter at the discretion of the ALJ to complete the case. Thus, Counsel has provided more than sufficient rationale to withdraw in the absence of the consent of his clients.

Notice to Clients

In OAH proceedings, service of a notice, motion or writing pertaining to special education due process hearing procedures shall be delivered personally or sent by first class

mail *or other means*, including *facsimile* transmission "if complete and without error," to OAH, or other persons or entities at their last known addresses, and, if the person or entity is a party with an attorney or other authorized representative of record in the proceeding, to the party's attorney or other authorized representative. Service must be made by a method that ensures receipt by all parties and OAH in a comparable and timely manner. (Ed. Code § 56100, subds. (a) and (j); Cal. Code Regs., tit 5, § 3083, subds. (a)-(c).)

As to notice to his clients, Mr. Greenbaum's declaration represents that he orally requested permission of the family to withdraw as their attorney of record, and Parents have declined to grant permission. OAH is inclined to grant Counsel's motion to withdraw but is constrained by the applicable law to require proof that Student and Parents have received notice of his request.

In this regard, Mr. Greenbaum's declaration states that he informed Father "intermittently" or "regularly" by email and telephone over the past ten days that Counsel would seek permission to withdraw unless a continuance of this case were granted. However, Mr. Greenbaum did not serve his clients with his motion to withdraw as required by the above authorities, even though he has otherwise been in email contact with Father. There is no proof of service accompanying the motions, and Counsel conceded during the PHC that he did not send Father or Parents a copy of the motion by any method calculated to provide delivery and notice to them.

Based on the foregoing, Mr. Greenbaum's motion for permission to withdraw as counsel of record is denied without prejudice. Counsel may refile the motion accompanied by proof of service on Student and Parents by a reasonable method that results in an acknowledgement of receipt from Parents, or by fax, mail or personal service. In the alternative, Counsel may file a substitution of attorneys reflecting his clients' consent.

Dated: September 17, 2013

/s/
DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings