BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: LA CANADA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018051171 ORDER RE: FATHER'S SECOND DECLARATION FOR OPPORTUNITY TO PROVIDE TESTIMONY AT HEARING

On May 25, 2018, La Canada Unified School District filed a Due Process Hearing Request naming Mother on behalf of Student. The complaint seeks an order that District's assessments are appropriate and that Mother is not entitled to independent educational evaluations. The proof of service attached to the complaint states that Mother and Father were each served by email with a copy of the complaint.

On August 20, 2018, ALJ Laurie Gorsline held a Prehearing Conference and issued a Prehearing Conference Order. The PHC Order established hearing dates on August 28, 29 and 30, and September 4, 2018. The Order required the parties to meet and confer about exhibits and witnesses on August 23, 2018. The Order stated the hearing was closed to the public. During the prehearing conference, the ALJ stated that in a closed hearing, all but the Parents, Student, and District's representative would be excluded from attendance.

On August 22, 2018, Student's Father filed a Declaration and Request for Opportunity to provide testimony at hearing. Father stated pursuant to the divorce decree, he has joint legal custody of Student, planned on attending the hearing and requested the opportunity to present testimony at the hearing because he agrees with District. Father asserted that he was in the process of requesting the family law court order a parenting plan evaluation and pending the evaluation grant Father sole legal custody over educational decisions. Father attached to his papers an excerpt from the June 2016 Judgment of Dissolution. The excerpt states that Parents have joint legal custody of minor children and that both Parents shall share the right and responsibility to make the decisions relating to health, education, and welfare of the children. It also states that the Parents must confer, and the consent of both Parents is required in making decisions regarding enrollment or termination of attendance in school, participation in extracurricular activities, medical and mental health treatment or therapy. The failure to obtain mutual consent may result in modification of the order of joint custody.

On August 23, 2018, OAH received a letter from District which OAH interpreted as a request to allow Father to participate in the meet and confer ordered at the prehearing

conference. According to District, Father was served with all pleadings and requested to participate in the meet and confer ordered at the prehearing conference. Mother refused to participate in the meet and confer if Father was allowed to participate.

On August 23, 2018, Mother filed a Motion to exclude Father from the meet and confer on the grounds that Father is not a party to the case and had no right to participate. Mother claimed that if Father participated in the meet and confer Mother would be deprived of fully participating in the meeting.

On August 23, 2018, Mother also filed a motion to exclude Father's declaration and testimony from the hearing on the grounds it had not been timely disclosed and was irrelevant.

On August 23, 2018, OAH issued an order excluding Father from participating in the meet and confer and attending the hearing on the grounds that Father was not a party to the action.

On August 24, 2018, OAH issued Notice of No Action on Motion as to Father's Declaration on the grounds that OAH had issued an order excluding Father from participating in the meet and confer or attending the closed hearing.

On August 24, 2018, Father filed a Second Declaration and Request for Opportunity to Provide Testimony at Hearing. In it, Father claims that the hearing relates to the education of his son over whom he shares joint legal custody and that any bar to his participation is a violation of his parental rights as adjudged by the Superior Court of California.

APPLICABLE LAW AND DISCUSSION

The Individuals with Disabilities Education Act affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).)

When a judicial decree or order identifies a specific person or persons as having authority to make educational decisions on behalf of a student, that person is determined to be the parent for purposes of the IDEA. (34 C.F.R. § 300.30(b)(2); Ed. Code, § 56028, subd. (b)(2).) When the parents of a student are divorced, the parental rights established by the IDEA apply to both parents, unless a court order or state law specifies otherwise. (Analysis of Comments and Changes to 2006 IDEA Part B Regulations, 71 Fed. Reg. 46568 (August 14, 2006); see also *Letter to Biondi*, OSEP, October 7, 1997, *Letter to Best*, OSEP, January 8, 1998, and *Letter to Serwecki*, OSEP, February 28, 2005.)

"The question of which divorced parent should be allowed to perform parental functions under the IDEA . . . is a matter for State or local divorce courts. Just as these courts deal with matters of custody, they can appropriately deal with matters related to the responsibility for making educational decisions on behalf of the child." (*Pam Taylor v. Vermont Department of Education et al.* (2nd Cir. 2002) 313 F.3d 768, 780; see also *Navin v. Park Ridge School Dist.* (7th Cir. 2001) 270 F.3d 1147, 1149 ["a divorced parent retains statutory rights [and] nothing in the IDEA overrides states' allocation of authority as part of a custody determination"].) Consistent with the above, the express language of a custody order has been used to determine which of two divorced parents has decision-making authority regarding education. (See *North Allegheny School District* (Penn. SEA 1997), 26 IDELR 774; *Upper Darby School District* (Penn. SEA 2002), 36 IDELR 285; *L.T. ex rel. C.T. v. Denville Township Board of Education* (N.J. Adm. 2004), 2004 WL 2623606.)

In California, joint legal custody means that both parents share the right and the responsibility to make decisions relating the health, education, and welfare of a child. (Fam. Code, § 3003.) When a family court makes an order of joint legal custody, the court must specify the circumstances under which the consent of both parents is required to be obtained in order to exercise legal control of the child and the consequences of the failure to obtain mutual consent. If the court does not state that the consent of both parents is required on an issue, either parent acting alone may exercise legal control of the child. (Fam. Code, § 3083.)

Although Father is an educational rights holder, he cites no legal authority that permits him to participate in the hearing in this matter. District named only Mother in this matter. The inference from the complaint and District's service of District filings on Father is that District understood Father held educational rights, yet District did not name Father as a party. In addition, neither party has named Father as a witness in this case. Under the terms of the custody order affecting Student both Mother and Father shared equally in authority and the responsibility to make decisions regarding Student's education, except for matters involving the school enrollment/termination, participation in extracurricular activities, and medical and mental health treatment or therapy, which required the consent of both Parents.

The three issues in this case are limited to whether District's assessments were appropriate such that District need not fund independent educational evaluations at public expense which were requested by Mother. Since the only issues to be decided at the due process hearing are the appropriateness of District's assessments, nothing in the Family Court Judgment requires Father's participation in the pending action. Either Parent acting alone had authority to request independent educational evaluations. District was required to act upon that request.

Father has been aware of this case for several weeks or months. On August 22, 2018, Father stated he was in the process of requesting that the Family Court grant Father sole legal custody over educational decisions. Nothing has been received by OAH indicating that the

Judgment of Dissolution has been modified in any way affecting the due process hearing from proceeding as scheduled on August 28, 2018 without the presence of Father. Accordingly, Father, as an unnamed potential respondent, does not have a right to participate in or attend a closed hearing.

IT IS SO ORDERED.

DATE: August 27, 2018

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LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings