BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017080408 ORDER DISMISSING ORDER TO SHOW CAUSE, AND DEEMING THIS MATTER FILED ON AUGUST 11, 2017

On August 21, 2017, Office of Administrative Hearings issued an Order to show cause, why the above-captioned case should not be dismissed for lack of jurisdiction.

Student filed written responses with OAH on August 30, 2017, September 1, 2017 and September 7, 2017.

District filed a written response on September 1, 2017.

Both parties appeared telephonically on September 8, 2017, at 1:00 p.m.

As discussed below, cause not to dismiss was established. This matter is deemed filed on August 11, 2017. All dates will remain on calendar as scheduled.

APPLICABLE LAW AND DISCUSSION

Pursuant to California Education Code section 5650, subdivision (a), due process hearing rights extend in most instances not to an unemancipated minor student, but to the student's parent or guardian. "Parent" includes a surrogate parent who has been appointed for children who are wards of the court pursuant to section 7579.5 or 7579.6 of the Government Code. (Education Code, §56028, subd.(5).) When Student filed this matter on his own behalf on August 2, 2017, he was an unemancipated minor for whom a surrogate parent appointment was then in place. Therefore at that time, Student lacked the legal capacity to file on his own behalf.

Pursuant to California Education Code section 56501, subdivision (a), due process hearing rights may also extend to the pupil him or herself, if no parent or guardian can be identified or located, and if no surrogate is appointed. On August 11, 2017, the Juvenile Court issued an order terminating the educational rights of the surrogate. Therefore as of August 11, 2017, pursuant to California Education Code section 56501, subdivision (a), due process hearing rights extended to Student himself. On August 11, 2017, when the Juvenile

Court issued the order terminating the educational rights of the surrogate, Student gained the legal capacity to file on his own behalf.

The parties stipulated on the record that this matter should be deemed filed on August 11, 2017, at which point Student had the legal capacity to file on his own behalf. The parties further stipulated that the already-scheduled prehearing conference and hearing dates should remain on calendar as scheduled.[1]

ORDER

1. Student gained legal capacity to file for due process on his own behalf on August 11, 2017.

2. This matter is deemed filed on August 11, 2017.

3. The prehearing conference and hearing dates will remain on calendar as scheduled.

DATE: September 8, 2017

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June Lehrman
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JUNE LEHRMAN
Administrative Law Judge
Office of Administrative Hearings

[1] The parties have waived the resolution period pursuant to which a local educational agency is required to convene a meeting with the parents and the relevant members of the Individualized Education Program team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1) (2006).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).)