BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ALAMITOS UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017050096 ORDER OF NO ACTION RE FATHER'S MOTION FOR JOINDER

On June 9, 2017, Father filed a request for to be joined in the above referenced matter, which was filed by Mother on behalf of Student on April 28, 2017, against the Los Alamitos Unified School District. On June 15, 2017, District filed a non-opposition to Father's joinder request. On June 16, 2017, Mother filed an opposition, asserting that Father's does not have the right to participate in this action based Parents' October 2015 agreement.

The State definition of parent for special education purposes is largely analogous to the federal definition. California defines "parent" as a biological or adoptive parent; a foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order; a guardian authorized to act as the child's parent or to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Section 361 of the Welfare and Institutions Code; an individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent who has been appointed pursuant to Section 7579.5 of the Government Code. (Ed. Code, § 56028, subd. (a).)

When more than one party qualifies as a parent pursuant to these definitions, the biological parent is presumed to be the parent unless the biological parent does not have legal authority to made educational decisions for the child. (34 C.F.R. § 300.30 (b)(1) (2006); Ed. Code, § 56028, subd. (b)(1).) If a judicial decree or order identifies a specific person to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent." (34 C.F.R. § 300.30(b)(2) (2006); Ed. Code, § 56028, subd. (b)(2).)

Both Parents possess legal custody of Student, and thus her educational rights, which includes both the right to file a due process hearing request and the right to participate in such a proceeding. The complaint Mother filed on behalf of Student alleges that District did

find Student eligible for special education and related services based on Mother's request and developed an IEP, and Father subsequently exited Student from special education, which the complaint alleges was a denial of a free appropriate public education by District.

Mother asserts that the October 2015 agreement Parents signed gives Mother, not Father, the sole right to file and participate in this matter. However, the agreement only states, "[Mother] may apply to Los Alamitos Unified School District for an IEP [individualized educational program] or 504 for [Student] and [Father] shall not interfere nor object to same. If [Mother] is able to obtain IEP services or accommodation, the parties will cooperate in implementing same." Mother did apply and obtain special education services for Student. Whether Father is cooperating in the IEP process is outside the jurisdiction of OAH, which is why OAH's June 13, 2017 order calls for Parents to either petition the family court as to which Parent, if any, has Student's educational rights, or enter into a stipulation as to the Parents' respective authority and cooperation in this matter.

As both Parents have legal custody of Student, which includes Student's educational rights, and the October 2015 agreement does not prohibit on its face Father's participation in this matter, no order of joinder of Father is required as Father has equal rights of Mother to participate as to whether District denied Student a FAPE. Therefore, OAH need not take any action as to Father's motion for joinder. Absent an order from family court, OAH will continue to serve Father with all documents and Father may appear at all proceedings.

IT IS SO ORDERED.

DATE: June 19, 2017

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings