

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF OREGON
for the
SUPERINTENDENT OF PUBLIC INSTRUCTION**

IN THE MATTER OF THE EDUCATION OF) **FINAL ORDER OF DISMISSAL**
)
R.D. and Silver Falls School District) Case No. DP 10-110
)

FINDINGS OF FACT

(1) On June 1, 2010, Jillian Bonnington filed with the Oregon Department of Education and the Silver Falls School District a request for a due process hearing on behalf of student and student's parents. Neither parent signed the request, and no attorney purporting to represent the parents or the child signed the request. On June 16, 2010, Silver Falls filed a motion to dismiss because Ms. Bonnington is not a licensed Oregon attorney.

(2) The request for due process hearing includes a California address for Ms. Bonnington. It does not give an Oregon State Bar number, and does not allege that Ms. Bonnington is an Oregon attorney. The Oregon State Bar's 2010 Membership Directory does not include Ms. Bonnington's name in its list of members.

CONCLUSION OF LAW

The request for due process hearing must be dismissed.

OPINION

According to the provisions of 34 C.F.R. § 300.512(a)(1), a party to a due process hearing has the right to:

Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities, except that whether parties have the right to be represented by non-attorneys at due process hearings is determined under State law;

Here, assuming that Ms. Bonnington is an "individual with special knowledge or training with respect to the problems of children with disabilities," the question is whether Oregon state law allows her to represent a party in a due process hearing in Oregon. ORS 9.160(1) states that:

Except as provided in this section, a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.

None of the exceptions set forth in ORS 9.160 addresses or is related to due process hearings. ORS 183.457 allows non-attorney representation in certain proceedings before certain administrative agencies, but neither the Department of Education nor the Superintendent of Public Instruction is among the entities included. ORS 183.458 also includes limited exceptions

allowing non-attorney representation, but only in child support and public assistance cases. ORS 343.165(5) mandates that the State Board of Education's rules "shall be as consistent as possible with the procedures applicable to a contested case under ORS chapter 183," and the statute has no provisions independently allowing non-attorney representation in due process hearings.

Finally, the Department of Education's own rules include no provisions allowing non-attorney representation in due process hearings. OAR 581-015-2345(1)(a) addresses parent requests for due process hearings. Only a "parent" may request the hearing, and either the parent or the "attorney representing the child" must notify the school district and the Department of the request. Further, according to the provisions of OAR 581-015-2345(1)(c), "[a] party may not have a hearing until the party, or the attorney representing the party, files a due process hearing request."

Only Ms. Bonnington's signature appears on the request for due process. Because she is neither a licensed Oregon attorney nor a non-attorney permitted by law to represent parties in due process proceedings, she has no standing to request a hearing.¹ Because neither parent nor an attorney purporting to represent the parents or the student signed the request, no valid request for due process hearing exists in this matter.² The request for due process hearing therefore must be dismissed for lack of jurisdiction.

ORDER

The request for due process hearing is **DISMISSED**.

Stephen H. Elmore, Administrative Law Judge
Office of Administrative Hearings

APPEAL PROCEDURE

NOTICE TO ALL PARTIES: If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. § 1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER**.

ENTERED at Salem, Oregon this 29th day of June, 2010 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.

¹ The record also includes a "Motion for Admission of Qualified Representative and Brief in Support of Advocate Representation" filed by Ms. Bonnington. For the same reasons that she has no standing to request a hearing, she has no standing to file a motion. Because the request for due process hearing is dismissed by this order, however, that issue need not be addressed further.

² Because the hearing request was filed by a person without standing to file it, no prejudice attaches. Other than as limited by time or other such procedural impediments, the parents retain the right to request a due process hearing themselves or through their Oregon-licensed attorney.

CERTIFICATE OF SERVICE

On this 29th day of June, 2010, I served a copy of the Final Order of Dismissal for Case No. DP 10-110

FIRST CLASS MAIL:

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