

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF:THE	)	<b>FINAL ORDER of DISMISSAL</b>
EDUCATION OF	)	
	)	OAH Case No. 2020-ABC-03983
<b>STUDENT AND MCMINNVILLE</b>	)	Agency Case No. DP 20-112
<b>SCHOOL DISTRICT 40</b>	)	
	)	

**HISTORY OF THE CASE**

On August 31, 2020, the Office of Administrative Hearings (OAH) received a Request for Impartial Hearing purportedly filed on behalf of Parent and Student. The request was signed by Peter G. Albert of the Brain Injury Rights Group, Ltd., and by Patrick Donohue of the Patrick Donohue Law Firm. On September 14, 2020, Joel Hungerford, of the Hungerford Law Firm, LLP, filed a Motion for Order to Show Cause, on behalf of the McMinnville School District, requesting that Parent demonstrate that Mr. Albert and/or Mr. Donohue are admitted to practice law in Oregon. Chief Administrative Law Judge (ALJ) John Mann issued a Ruling and Order Granting Motion to Show Cause on September 17, 2020 (Show Cause Order). Parent was ordered to file a response to the OAH no later than 5:00 p.m., Pacific Daylight Time, on September 23, 2020.

On September 22, 2020, Mr. Albert submitted a written request for an extension of time to respond to the Show Cause Order. Mr. Albert asserted that Parent needed additional time to secure local counsel to represent Parent in this case. Later on September 22, 2020, Chief ALJ Mann notified the parties via email that the requested extension was denied. Chief ALJ Mann noted that securing local counsel would not cure the defect noted in the Show Cause Order; that the hearing request was filed by two individuals who did not appear to have the legal authority to do so. However, Chief ALJ Mann noted that if the case was dismissed it would be without prejudice and that Parent would have the ability to refile the hearing request through local counsel.

**ISSUES**

Whether this case should be dismissed without prejudice.

**FINDINGS OF FACT**

1. On August 31, 2020, the OAH received a request for Impartial Hearing purportedly filed on behalf of Parent and Student. The request was signed by Peter G. Albert and Patrick Donohue.

2. On September 14, 2020, Joel Hungerford, of the Hungerford Law Firm, LLP, filed a Motion for Order to Show Cause, on behalf of the McMinnville School District. In the Motion, Mr. Hungerford asserted that neither Mr. Albert nor Mr. Donohue appeared to be licensed to practice law in Oregon. Mr. Hungerford asked that Parent be ordered to show cause that Mr. Albert and/or Mr. Donohue were licensed Oregon attorneys.

3. On September 15, 2020, Chief ALJ Mann searched the Oregon State Bar member directory website<sup>1</sup> and found that neither Mr. Albert nor Mr. Donohue were listed as licensed Oregon attorneys.

4. On September 17, 2020, Chief ALJ Mann issued a Ruling and Order Granting Motion to Show Cause ordering Parent to show cause that Mr. Albert and/or Mr. Donohue were licensed to practice law in Oregon and that the OAH should not dismiss their hearing request. Parent was ordered to file a response to the OAH no later than 5:00 p.m., Pacific Daylight Time, on September 23, 2020.

5. As of September 23, 2020, Parent had not filed the required response and had not provided any evidence to establish that either Mr. Albert or Mr. Donohue were licensed to practice law in Oregon.

### **CONCLUSIONS OF LAW**

This case should be dismissed without prejudice.

### **OPINION**

This case is subject to the Oregon Department of Justice's Model Rules for administrative hearings held before the OAH.<sup>2</sup> OAR 137-003-0550 provides, in relevant part:

(1) Natural persons who are parties in a contested case may represent themselves or may be represented by an attorney or other representative as authorized by federal or state law, including ORS 183.458.

\* \* \* \* \*

(3) Unless otherwise provided by law, an out-of-state attorney may not represent a party to a contested case unless the out-of-state attorney is granted permission to appear in the matter pursuant to Oregon Uniform Trial Court Rule 3.170. Local counsel who obtained the order on behalf of the out-of-state attorney must participate meaningfully in the contested case in which the out-of-state attorney appears.

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<sup>1</sup> [https://www.osbar.org/members/membersearch\\_start.asp](https://www.osbar.org/members/membersearch_start.asp)

<sup>2</sup> OAR 581-015-2340(2) provides "The Department of Justice's model rules for administrative hearings, OAR 137-003-0501 through 137-003-0700, apply to the extent consistent with federal law and these division 15 regulations."

Nothing in Oregon law authorizes a party to a special education hearing in Oregon to be represented by individuals not licensed to practice law in Oregon. Furthermore, OAR 581-015-2345(1)(c) provides:

A party may not have a hearing until the party, or the attorney representing the party, files a due process hearing request that meets the requirements of subsection (1)(a)(B) or (1)(b)(B).

The Request for Impartial Hearing purportedly filed on behalf of Parent and Student was signed by two individuals who do not appear to be licensed to practice law in Oregon. Parent has not provided any evidence to establish that the individuals are authorized to practice law in Oregon. Therefore, the Request for Impartial Hearing did not comply with OAR 581-015-2345(1)(c). Parent is not entitled to a hearing until such time as Parent or a duly-licensed Oregon attorney files a due process hearing request that meets the requirements of Oregon law. This case thus must be dismissed without prejudice.

### **ORDER**

Parent's Request for Impartial Hearing is dismissed without prejudice. Parent may refile a hearing request following this dismissal so long as the request is either filed directly by Parent or by a duly-licensed Oregon attorney.

**John Mann**

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Chief 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 September, 2020, with copies mailed to:

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

**CERTIFICATE OF MAILING**

On September 29, 2020 I mailed the foregoing FINAL ORDER of DISMISSAL in OAH Case No. 2020-ABC-03983 to the following parties.

**BY: CERTIFIED MAIL:**

Parent(s) of Student  
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Lafayette OR 97127

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**BY ELECTRONIC MAIL:**

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Anesia N Valihov  
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