

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

IN THE MATTER OF:THE) **FINAL ORDER of DISMISSAL**
EDUCATION OF)
) OAH Case No. 2020-ABC-03985
STUDENT AND BEAVERTON) Agency Case No. DP 20-113
SCHOOL DISTRICT 48J

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 11, 2020, Robin Day, Special Education Legal Counsel for the Beaverton School District filed a Motion for Order to Show Cause 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 15, 2020.

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 11, 2020, Robin Day, Special Education Legal Counsel for the Beaverton School District filed a Motion for Order to Show Cause. In the Motion, Ms. Day asserted that neither Mr. Albert nor Mr. Donohue appeared to be licensed to practice law in Oregon. Ms. Day 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 website¹ and found that neither Mr. Albert nor Mr. Donohue were listed as licensed Oregon attorneys.

4. On September 10, 2020, Chief ALJ Mann issued a Ruling and Order Granting Motion

¹ https://www.osbar.org/members/membersearch_start.asp

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 22, 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.

6. On September 23, 2020, Ms. Day submitted an email in which Parent asserted that Parent did not recall requesting the assistance of Mr. Albert or Mr. Donohue. Parent further asserted that Parent did not know how Mr. Albert and Mr. Donohue had obtained Student's name and that Parent did not want Student's information shared with them. The name of the Parent as shown on the email was the same name listed as the Parent in the Request for Impartial Hearing filed by Mr. Albert and Mr. Donohue.

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.² 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.

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

² 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."

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).

Furthermore, Parent denied having retained Mr. Albert and/or Mr. Donohue and was not aware how they had obtained information about Student. It thus appears that the request for hearing was filed without Parent's knowledge or authorization. Nevertheless, if Parent wishes to file a hearing request, Parent may do so either personally or through a duly-licensed Oregon attorney. Nothing in this order precludes Parent from filing a request for hearing should Parent choose to do so.

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

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 24th 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 24, 2020, I mailed the foregoing FINAL ORDER of DISMISSAL in OAH Case No. 2020-ABC-03985 to the following parties.

By: Certified Mail

Parent(s) of Student
12216 NW Barnes Rd #140
Portland OR 97229

Don Grotting, Superintendent
Beaverton School District 48J
16550 SW Merlo Rd
Beaverton OR 97003

Robin Day, Attorney at Law
Beaverton School District
17880 SW Blanton St.
Beaverton OR 97078

BY ELECTRONIC MAIL:

Mike Franklin, Legal Specialist
Department of Education
255 Capitol Street NE
Salem, OR 97310-0203

Lucy M Garcia
Hearing Coordinator
Office of Administrative Hearings