

NEW MEXICO PUBLIC EDUCATION DEPARTMENT
BEFORE THE DUE PROCESS HEARING OFFICER

[REDACTED]
as parents and on behalf of
E.W., Student,

Petitioners,

v.

DPH No. 1718- 22

LAS CRUCES PUBLIC SCHOOLS,

Respondent.

**ORDER SUSTAINING OBJECTION BY RESPONDENT DISTRICT,
VACATING FIRST ORDER DENYING RESPONDENT DISTRICT'S MOTION TO
DISMISS, DENYING DISTRICT'S MOTION TO DISMISS,
AND GRANTING PETITIONERS' MOTION TO DISMISS**

This matter is before the Due Process Hearing Officer ("DPHO") on the Objection by the Las Cruces Public Schools ("District") to my setting a hearing to review whether Student has the capacity to enter into a settlement agreement with regard to this matter. In its Objection, the District also calls into question the correctness of my prior order denying the District's motion to dismiss, on the basis of lack of standing by Grandparents to proceed on Student's behalf. *See* Order Denying Motion to Dismiss, entered June 19, 2018. While the District has not moved to reconsider my prior order, the District has called my jurisdiction into question and I will therefore also address the correctness of my prior order *sua sponte*, based on my independent obligation to ensure that I do not act without jurisdiction.

The District's Objection accurately recites the history of the current dispute so I will not repeat that history in detail, except as necessary to explain my ruling. I find and conclude as

follows:

1. Student has developmental disabilities but is apparently able to express her wishes generally to her grandparents.
2. Student has signed a power of attorney allowing Grandparents to act on her behalf. The power of attorney appears to give Grandparents the authority to act on her behalf in this matter.
3. There is nothing obvious in what has been submitted to me to suggest that Student lacks the capacity to express her wishes generally or to sign a power of attorney. No one has submitted evidence that challenges Student's capacity to sign a power of attorney.
4. I disagree with the District that Grandparents are the only parties to the request for Due Process and that Student is not a party. She is, in fact, the real-party-in-interest in this matter, just as she would be if she were a minor child. However, because she has reached the age of majority, she must proceed on her own or grant authority to others to proceed on her behalf. If she lacks capacity to do either, then Grandparents must seek guardianship of Student. In other words, Grandparent's standing to proceed is derivative of Student's standing.
5. The District correctly states that as a Due Process Hearing Officer, I lack authority to make a definitive determination whether Student does or does not have the legal capacity to sign a power of attorney giving Grandparents the authority to proceed on Student's behalf. I therefore **SUSTAIN** the District's Objection to my holding a hearing to determine whether Student herself does or does not wish to settle her request for Due Process or more generally whether Student has legal capacity to proceed in this matter.

6. However in the absence of any evidence to the contrary, I will presume that Student has the authority to grant power of attorney to Grandparents to proceed on her behalf in this matter. *See generally Heights Realty, Ltd. v. Phillips*, 1988-NMSC-007, ¶ 5, 106 N.M. 692, 693, 749 P.2d 77, 78. Therefore, Student was and is entitled to do so, just as any other student is allowed to do in a Due Process proceeding. However, because I agree with the District that my review of this matter is greatly limited by the narrow jurisdiction granted to a Due Process Hearing Officer, this presumption should not be granted any collateral legal effect or be used to support any factual allegation in any other proceeding.
7. Based on the power of attorney, Grandparents have standing to proceed on Student's behalf in this matter. As a matter of law, the District has not carried its burden to show that Grandparents do not have the authority to appear on Student's behalf. Therefore, I vacate the previous Order in this case dismissing Grandparents as parties and permitting them to proceed as next friends, and enter a new Order *nunc pro tunc*, **DENYING** the District's motion to dismiss for lack of standing.
8. Grandparents have standing and authority to act on Student's behalf in this matter. Therefore, Grandparents had and have standing and authority to settle the dispute between the parties and to move to dismiss their request for Due Process.
9. Grandparents settled this matter on behalf of Student and signed and submitted a notice of withdrawal of their complaint to the mediator.
10. Grandparents also submitted a motion to dismiss to the Due Process Hearing Officer on June 27, 2018, via email. Typically, this would be the end of the matter and I would grant the motion to dismiss on the basis of the amicable resolution of the dispute and a

stipulated motion to dismiss.

11. However, in submitting the motion to dismiss to the DPHO, Mr. [REDACTED] suggested, in his accompanying email correspondence, that Student likely did not understand the agreement. Mr. [REDACTED] also took the opportunity to complain, essentially, that the whole system is stacked against Grandparents and against Student. Further, Mr. [REDACTED] questioned the motives of all concerned, including the New Mexico Department of Education, Student's school, the District, and counsel for the District. See Email dated 6/27/18 at 8:49 a.m. Mr. [REDACTED] thus declined to take full ownership of the motion to dismiss he himself was submitting, stating, "Ms. Howard-Hand asked us to sign and mail this motion to you." *Id.* Significantly, however, Mr. Conley's email contained no affirmative request for relief.
12. In response to this email correspondence, the Hearing Officer set a hearing to consider whether Grandparents or Student had the capacity to settle. Among other factors influencing my decision to hold a hearing to address the settlement agreement was Grandparents' *pro se* status and Student's developmental disabilities, of whatever degree. I am inherently required to safeguard the interests of any party who may not have the capacity to understand the proceedings at hand. Grandparents' *pro se status* made this task all the more problematic.
13. When the District objected to a hearing to review the settlement agreement and issues related thereto, I informed Grandparents that they could file a response by a date certain if they so wished, and explicitly informed Grandparents that they should *not* just send me an email. Mr. Conley's response was, respectfully, typical of how he has addressed matters

in this proceeding in general: “I will see what I can do in drafting a response in the format you are looking for.” Email dated 7/11/18 at 1:42. Mr. [REDACTED] then continued his lengthy complaint about “[t]he entire New Mexico System.” *Id.* No formal response was forthcoming.

14. I will again take into account Grandparents’ *pro se* status and consider their argument, despite its lack of formality. Their argument appears to be that Student’s power of attorney is valid and that therefore they should not be required to seek guardianship of Student. Grandparents also complain that they should not be required to pay for an attorney to represent Student in the Due Process proceedings.
15. I have concluded as a matter of law that Student’s power of attorney is valid, in the absence of evidence to the contrary. The cost of seeking guardianship of Student or proper legal representation for Student is not a relevant consideration, in terms of the merits of the District’s Objection.
16. Notably, Grandparents have not requested any affirmative relief in this email either. Instead, Mr. Conley’s primary objective appears once again to malign the “entire New Mexico System.” *Id.* Regardless of the condition of the “entire New Mexico system,” Mr. Conley’s list of grievances fails to address the merits of the District’s Objection.
17. The New Mexico Supreme Court has instructed that judges, presumably including administrative law judges, should “regard pleadings from *pro se* litigants with a tolerant eye, but a *pro se* litigant is not entitled to special privileges because of his *pro se* status.” *Bruce v. Lester*, 1999-NMCA-051, ¶ 4, 127 N.M. 301, 302, 980 P.2d 84, 85 (citations omitted). A party who chooses to represent himself “must comply with the rules and

orders of the court, and will not be entitled to greater rights than those litigants who employ counsel.” *Id.* (citation omitted).

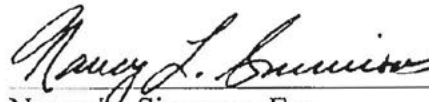
18. Mr. Conley’s mixture of acquiescence and grievance, sometimes in the same paragraph, makes it impossible for me even to determine clearly his position on the pending questions of standing and capacity. This compounds the problem presented by his lack of formal pleadings or even informal requests for relief. Instead, Mr. Conley’s primary objective appears to present a general complaint about everything and everyone related to his granddaughter’s education. Having not reviewed the merits of the case, I pass no judgment on whether his anger is justified or not. I do conclude that the only clear and relevant argument that I am able to discern from his statements is that Student has signed a valid power of attorney, allowing her grandparents to represent her in these proceedings. As I have said, with this statement, I agree.
19. Because Grandparents have the necessary authority to settle this matter and the parties have done so, I **GRANT** Petitioners’ motion to dismiss on the basis of amicable settlement.
20. As a general rule, I would not comment on the conduct of counsel. Mr. [REDACTED] however, has singled out counsel for the District as bearing ill motives. To the contrary, I find that Ms. Howard-Hand has acted professionally, courteously, and in good faith throughout these proceedings. Her Objection was well-researched, well-written, and helpful for the correct resolution of this matter.

IT IS THEREFORE ORDERED, AS FOLLOWS:

1. The prior Order Denying the District’s Motion to Dismiss is VACATED and this Order is

substituted therefor.

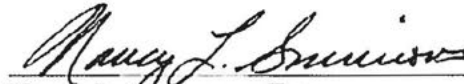
2. The District's motion to dismiss the Due Process Hearing Request for lack of standing is DENIED. [REDACTED] and [REDACTED] remain as "Petitioners, as grandparents and on behalf of Student."
3. The District's Objection to setting a hearing to review Student's capacity is SUSTAINED and the hearing currently set for July 18, 2018 is VACATED.
4. Petitioners' motion to dismiss the request for Due Process, on the basis of amicable resolution by the parties, is GRANTED.
5. ENTERED: July 16, 2018



Nancy L. Simmons, Esq.
Due Process Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing Order was electronically transmitted via email to the Parties, and a courtesy copy was electronically transmitted via email to New Mexico Public Education Department to Michelle Bowdan, Esq., this 16th day of July, 2018.



Nancy L. Simmons, Esq.
Due Process Hearing Officer