

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013090535

ORDER REQUIRING SUBMISSION
OF PROOF OF HOLDING
EDUCATIONAL RIGHTS FOR
STUDENT OR AUTHORIZATION TO
FILE REQUEST FOR HEARING ON
BEHALF OF STUDENT

On September 16, 2013, the Office of Administrative Hearings (OAH) received a request for a due process hearing (complaint) filed by Student and Parent. The original complaint was apparently signed by both Student and Parent. On October 8, 2013, Parent filed an amended complaint indicating that it was filed “on behalf of” Student. The parties identified in the complaint and amended complaint filed several motions. Neither Student nor Parent timely responded to any of them. On November 5, 2013, after OAH had issued an order on District’s motion to dismiss, Parent filed a request for an extension of time to respond to District’s motion to dismiss. This request appears to be on behalf of both Parent and Student, but only Parent signed the request. Parent’s request for additional time has not been ruled on as of the date of this order, and any additional filing received will be treated as a motion for reconsideration because an order on District’s motion to dismiss has already issued.

A parent or guardian, and an emancipated pupil, among others, may file a request for a due process hearing. (Ed. Code, § 56501, subd. (a).) Once a pupil reaches the age of 18, unless he or she has been determined to be incompetent, the parent retains the right to receive any notice of procedural safeguards require under law. (Ed. Code, § 56041.5.) All other rights of the parent transfer to the pupil. (*Ibid.*) As a result, a parent is no longer authorized to file a request for hearing on behalf of the pupil unless the parent is appointed his or her conservator (Ed. Code, § 56028, subd. (a)(2).), or the pupil transfers his or her educational rights to the parent. A parent retains authority to file a request for hearing concerning the parent’s rights under special education law. (*Winkelman ex rel. Winkelman v. Parma City*) (2007) 550 U.S. 516, 531 [127 S.Ct. 1994, 2004.]

On October 18, 2013, OAH staff spoke with Parent and informed him that he needed to file proof that he held educational rights on behalf of Student. Parent responded that he would submit proof that he was authorized to file the request for hearing on behalf of Student. OAH has not yet received anything from Parent indicating he holds educational rights for Student, or is otherwise authorized to file a request for hearing on behalf of Student.

The allegations in the amended complaint appear to include issues on behalf of both Student and Parent. While Parent is authorized to request a hearing to effectuate his rights, until he submits verification that he is authorized to request a hearing on behalf of Student, Student's portion of the case cannot go forward. Accordingly, Parent is ordered to submit verification that he holds Student's educational rights, or is otherwise authorized to file a request for hearing on behalf of Student. Parent must submit this verification by 5:00 p.m. on November 15, 2013. If Parent fails to do so, then OAH may dismiss this matter to the extent it raises claims on behalf of Student alone.

It is so ordered.

Dated: November 7, 2013

/s/

JUDITH A. KOPEC
Division Presiding Administrative Law Judge
Office of Administrative Hearings