

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011030648

ORDER GRANTING MOTION TO
DISMISS

On March 11, 2011, Parent, on behalf of Student, filed a Request for Due Process Hearing (complaint) naming Fresno Unified School District (District).

On April 27, 2011, during the telephonic prehearing conference (PHC), District brought a Motion to Dismiss, alleging that Student's educational rights had transferred to Student when he reached the age of 18 on March 23, 2011, and therefore, Parent lacked standing to file the complaint. The parties presented oral arguments. The parties were given until noon on April 29, 2011, to submit written briefs or responses.

On April 29, 2011, District filed a written brief in support of its Motion to Dismiss with prejudice.¹ The Office of Administrative Hearings received no written response from Parent.

APPLICABLE LAW

Education Code section 56041.5 provides:

When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

DISCUSSION

¹ District raised other contentions in its Motion to Dismiss the complaint that would be more appropriately raised as affirmative defenses at hearing. Those contentions are not addressed in this order.

Student reached age 18 on March 23, 2011. District contends that on Student's 18th birthday all educational rights transferred from Parent to Student. District contends that Parent's complaint must be dismissed because Student turned age 18, is scheduled to graduate from high school in June 2011, and has expressed his desire to leave the special education program. Parent contends that Student is still a child who needs special education services and since the complaint was filed before Student turned age 18, the complaint should not be dismissed. Parent's proposed resolution to the complaint is compensatory education.

Student was advised, at both the November 30, 2010, and March 4, 2011 individualized education program (IEP) team meetings that upon turning 18, all educational rights would transfer to Student. He was advised that when Student reached age 18 he had the right to receive all information about his educational program and make all decisions related to his education, including the right to represent himself at an IEP meeting and sign the IEP in place of his parent or guardian. Parent has presented no evidence showing that Student has either transferred his educational right to Parent or has authorized her to pursue this action. While it is true that Parent held the educational rights when the complaint was filed, those rights transferred to Student on March 23, 2011. Accordingly, absent any documentation showing that Parent holds Student's educational rights or is authorized to pursue this case, District's motion to dismiss must be granted.

ORDER

1. District's Motion to Dismiss the complaint is granted.²
2. All scheduled hearing dates are hereby vacated.

Dated: May 3, 2011

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings

² Parent may re-file a complaint along with documentation establishing that Student has authorized Parent to act on his behalf, or that Student has been placed under a conservatorship which grants Parent his educational rights.