

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014101023

ORDER DENYING MOTION TO
DISMISS

On October 22, 2014, Student, by and through her Parent and Legal Guardian, filed with the Office of Administrative Hearings a Request for Due Process Hearing naming the Twin Rivers Unified School District as respondent.

On November 13, 2014, Twin River filed with OAH a Motion to Dismiss Student's complaint, alleging that the Petitioner, Student's parent, does not have standing to bring the complaint as Student is 18 years of age and not conserved.

On November 9, 2014, Student filed an opposition.

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.

A parent is authorized to file a due process request on behalf of a pupil over 18 years of age if the pupil transfers his or her educational rights to the parent. (*Student v. Lincoln Unified School District* (2013 OAH) OAH Case No. 2013090535.)

DISCUSSION

In her opposition, Student contends that Parent does have standing on grounds Parent has the authority to represent Student in educational matters pursuant to a Durable Power of Attorney executed by Student on March 15, 2014. In support of Student's contention, there is attached a copy of the Durable Power of Attorney for Financial Management and Personal Care Decisions. Article III, section B authorizes Student's agent, her parent, to act as her representative for matters involving the school district and other educational opportunities. Thus, Student's parent has standing to bring the request for due process hearing. Additionally, Student contends that Twin Rivers had knowledge of the Power of Attorney since March 15, 2014, and had accepted the same Power of Attorney to permit Parent to represent Student since March 15, 2014. .

Here, Parent has standing. Thus, Twin Rivers' motion to dismiss is denied.

ORDER

Twin Rivers' Motion to Dismiss is DENIED. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: November 21, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings