

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

HEMET UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015090860

ORDER DENYING MOTION TO
DISMISS OR FOR ALTERNATIVE
RELIEF

On September 11, 2015, Student, by and through his attorney Michelle Ortega, filed a request for due process (complaint), naming Hemet Unified School District. On September 16, District filed a motion to dismiss. District's motion asserted that although Student is 18 years of age, the complaint's narrative indicates the due process is actually being prosecuted by Student's Mother, and Mother has not provided or pled that Student assigned his educational rights. District seeks an order of dismissal because Mother does not have standing to file and prosecute the complaint. In the alternative, District requests an order directing Mother to produce evidence she has standing (e.g., an assignment of rights or conservatorship) to pursue the due process.

RELEVANT LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.). Here, by not submitting a declaration or exhibit, District is acknowledging that its motion to dismiss is solely based upon the complaint. However, the complaint contradicts District's characterization of Mother's prosecutorial role. Therefore, the complaint is not facially outside of OAH's jurisdiction.

District cites the complaint's many references to Mother's address, views and efforts, as evidence that Mother, not Student, retained counsel and is prosecuting the complaint. However, the complaint unambiguously identifies Student as the 18-year-old petitioner. The complaint's regular referral to Mother's opinions and actions are made in support of Student's claims because Mother held Student's educational rights at all relevant times.

District's alternatively requests that OAH direct Mother, Student and/or Student's counsel to document that Mother has standing to prosecute the due process request. However, this request is also based upon the assumption that Mother – not Student – is the petitioner. This is not a situation where parents filed on behalf of a student who, during the pendency of the due process, turned 18 years old. There, some evidence of the parents' standing would be required for them to continue to prosecute. Here, in contrast, the complaint clearly identifies the adult Student as the petitioner.

The complaint does not facially indicate that it is outside of OAH's jurisdiction. The complaint clearly identifies Student as 18 years old and the petitioner. District's motion to dismiss, or for alternative relief, is denied.

ORDER

1. District's motion to dismiss, or for alternative relief, is denied.
2. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: September 28, 2015

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings