

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

MODESTO CITY SCHOOLS,

Respondent.

OAH No. N2006050401

**ORDER DENYING RESPONDENT'S
MOTION TO DISMISS COMPLAINT**

On May 10, 2006, Lina Foltz, attorney, filed a request for a due process hearing (Complaint)¹ on behalf of Petitioner Student,² which named Modesto City Schools as Respondent. On July 11, 2006, Marcy Gutierrez, attorney for Respondent, filed a motion to dismiss. On July 20, 2006, Petitioner filed opposition to the motion to dismiss. On July 25, 2006, Respondent submitted a reply to Petitioner's opposition to the motion.

APPLICABLE LAW

Education Code section 56501, subdivision (a) provides that a parent or guardian, an emancipated student, a surrogate parent, and the public education agency may initiate a due process hearing.

Education Code section 56041.5 provides that when a student who is eligible for special education services reaches the age of 18, unless the student has been determined to be legally incompetent, the local education agency shall provide any notice of procedural safeguards to both the student and the student's parents. All other rights accorded to a parent transfer to the student.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² The Complaint identifies Student and his mother as petitioners.

Education Code section 56026.1, subdivision (a) and 34 Code of Federal Regulations part 300.122(A)(3)(i) provide that a student who graduates from high school with a regular high school diploma is no longer eligible for special education services.

A case is moot when the decision can have no practical impact or provide the parties actual relief. (*MHC Operating Limited Partnership v City of San Jose* (2003) 106 Cal.App.4th 204, 214; *Bd. of Education of Oak Park v. Nathan R.* (7th Cir. 2000) 199 F.3d 377, 381.) If a student who has graduated from high school does not contest his or her graduation in a request for a due process hearing, the case is moot. (*T.S. v. Independent School Dist. No. 54* (10th Cir. 2001) 265 F.3d 1090, 1092; see *Russman v. The Bd. of Education of the Enlarged City School Dist. of the City of Waterliet* (2nd Cir. 2001) 260 F.3d 114, 119.) Once a student eligible for special education services graduates from high school, he or she is no longer entitled to a free and appropriate public education (FAPE). (*Ibid.*; *Parents of Student W v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497 [Student who graduated from high school was appropriately denied compensatory education. “The IDEA promises him no more.”]³ Any claim that a FAPE was denied becomes moot upon a valid graduation. (*Russman v. The Bd. of Education of the Enlarged City School Dist. of the City of Waterliet, supra*, 260 F.3d. at p. 119.)

Education Code section 56505, subdivision (l) provides that a party may file a Complaint within a three-year statute of limitations until October 9, 2006, but shall, in accordance with Education Code section 56501.5, participate in a mediation conference in an effort to resolve the due process hearing issue. This time period shall not apply to a parent if the parent was prevented from requesting the due process hearing due to either specific misrepresentations by the local educational agency that it had solved the problem forming the basis of the due process hearing request, or the local educational agency’s withholding of information from the parent that was required to be provided to the parent.

Education Code section 56501.5, subdivision (a) provides that notwithstanding any other provision of law, prior to a party invoking his or her right to an impartial due process hearing, the local education agency shall convene a resolution session. A resolution session is a meeting between the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process hearing request. Subdivision (a)(4) provides that at the meeting the parents of the student may discuss the due process hearing issues and the facts forming the basis of the due process hearing request. It also provides that the local education agency shall be provided an opportunity to resolve the matter.

Title 20 United States Code Section 1415(f)(1)(B) provides that a resolution session shall be convened prior to the opportunity for an impartial due process hearing under Section 1415(f)(1)(A). Section 1415(f)(1)(A) provides that after a due process complaint is filed, the party has an opportunity for an impartial due process hearing.

³ It appears that the issue of mootness was not raised and was not decided in *Parents of Student W v. Puyallup School Dist. No. 3*. The court noted that it was first informed at oral argument that Student W had graduated from high school. (31 F.3d at p. 1494.)

The fundamental task when construing a statute is to ascertain the Legislature's intent so as to effectuate the purpose of the statute. (*Smith v. Superior Court of Los Angeles County* (July 10, 2006, S129476) ___ Cal.4th ___ [2006 Cal. LEXIS 8354, p. 7], citing *Day v. City of Fontana* (2001) 25 Cal.4th 268, 272.) First, the words of the statute are given their usual and ordinary meaning. (*Id.* at p. 8) Second, a statute is not construed in isolation; it must be read with reference to the scheme of law of which it is a part so that the whole may be harmonized and effective. (*Ibid.*, citing *In re Marriage of Harris* (2004) 34 Cal.4th 210, 222.) Third, if the terms of the statute are ambiguous, extrinsic sources, such as legislative history, may be examined. (*Ibid.*, citing *Day v. City of Fontana, supra*, 25 Cal.4th at p. 272.) A statute must be construed to most closely comport with the Legislature's apparent intent, endeavoring to promote rather than defeat the statute's general purpose, and avoiding a construction that would lead to absurd consequences. (*Ibid.*)

DISCUSSION

District provides several arguments in support of its request that the Complaint be dismissed in its entirety. First, District argues that the Complaint must be dismissed because Student's mother lacks standing to file the Complaint. Second, District argues that the Complaint is defective because it fails to challenge Student's graduation from high school. In the alternative, District argues that specific issues be either dismissed as outside the jurisdiction of the Office of Administrative Hearings (OAH), or limited to allegations that are within the statute of limitations.

Standing of Student's Mother. The Complaint states that Student and his mother, by and through their attorney, request a due process hearing. District argues that Student's mother does not have standing because Student is 18 years old. Student responds that the IDEA does not require him to explain why he and his mother are represented by Ms. Foltz. Student also argues that he does not need to provide evidence in response to the District's assertions. Nevertheless, he submitted excerpts of a retainer agreement indicating that Ms. Foltz represents both Student and his mother in this matter and a copy of Student's authorization for his mother to act as his agent to resolve this matter.

Education Code sections 56501, subdivision (a), and 56041.5 provide that when a student reaches 18 years of age, his parents retain the right to continue to receive any notice of procedural safeguards, and all other rights the parents previously held are transferred to the student. Accordingly, the right that Student's mother had to file a due process hearing transferred to Student when he turned 18 years old. Ms. Foltz, representing Student, is authorized to file the Complaint in this matter. Student, by authorizing his mother to resolve this matter, has also authorized her to represent him in this action. Student's mother has no independent authority to appear on her own behalf. Student is correctly identified as the Petitioner in this action. To the extent that Petitioner intends to include his mother as a fellow petitioner, she is dismissed as a party.

Failure to Challenge Student's Graduation from High School. It is undisputed that Student graduated from high school in June 2005. District argues that the Complaint must be dismissed because Student fails to challenge his graduation from high school. Although not framed as such, District argues that the Complaint must be dismissed because it is either moot or outside the jurisdiction of OAH. District correctly cites authority holding that if a student, who received special education services and has graduated from high school, does not challenge his graduation, there is no basis for a due process hearing.

Student argues that the Complaint alleges that he did not complete the minimum units of general curriculum required for graduation and that the District's manipulation of credits deprived him of instruction in general curriculum and constituted a denial of FAPE.⁴

The Complaint alleges that Student was denied a FAPE during the 2002-2003 through 2004-2005 regular and extended school years. It also alleges that District denied Student a FAPE for the 2005-2006 school year, the school year after he graduated, by "improperly exiting him from high school without academic credits in general curriculum and without functional academic skills and transition training to successfully function at his ability level either in higher education or employment." Although framed as a proposed resolution, the Complaint further states, "[t]he District improperly exited [Student] from public education and thereby denied [Student] special education and related services to which he was entitled until he reached age 22 or until he satisfied criteria for graduation or certification for transition to higher education or employment." In another section, the Complaint states, "The District denied [Student] a FAPE in his [sic] 2005-2006 school year by improperly graduating him without skills or training for him to reach academic proficiency at his ability level."

The Complaint adequately challenges the validity of Student's graduation. The Complaint is neither moot, nor outside the jurisdiction of OAH.

Allegation Outside Jurisdiction of OAH. District alleges that Issue #1 in the Complaint is outside the jurisdiction of OAH. Student argues that this issue alleges that the District's denial of FAPE for the 2002-2003 school year is within the statute of limitations because the District failed to provide progress reports or disclose Student's lack of academic progress until November 2004. Although Issue #1 is not a model of clarity, when read in connection with the proposed resolution, the essence of the allegation is as Student argues. Issue #1 is within the jurisdiction of OAH.

Statute of Limitations. The Complaint, filed with OAH on May 10, 2006,⁵ alleges violations during the 2002-2003 school year. District properly argues that the statute of limitations may bar some of the allegations.⁶

⁴ Student also states that he disputes whether he passed the California high school exit examination. This allegation is not included in the Complaint.

⁵ District asserts in its response to the Complaint that it received the Complaint on May 11, 2006.

⁶ Respondent's incorrectly asserted in its motion that allegations prior to May 11, 2002, are barred by the statute of limitations. Respondent correctly argues in its reply that a three-year statute of limitations bars allegations prior to May 11, 2003, and a two-year limitation bars those prior to May 11, 2004.

For Complaints filed prior to October 9, 2006, the statute of limitations is three years as long as the petitioner participates in a mediation conference as provided in Education Code section 56501.5. (Ed. Code, § 56505, subd. (l).) Education Code section 56501.5, subdivision (a) requires that “prior to invoking his or her right to an impartial due process hearing . . . ,” the District shall convene a resolution session. The statute of limitations is two years if the petitioner does not participate in a mediation conference.

District argues that Petitioner filed the Complaint on May 11, 2006, but did not participate in a mediation conference. District implies, but does not expressly argue, that in order to take advantage of a statute of limitations of three years, Petitioner must participate in a mediation conference prior to filing a Complaint. Petitioner responds that he did participate in an informal resolution session⁷ on May 19, 2006, shortly after filing the Complaint.

The District’s interpretation relies upon the meaning given the phrase, “prior to invoking his or her right to an impartial due process hearing . . . ,” in Education Code section 56501.5, subdivision (a). In District’s view, invoking a right to a due process hearing means filing the Complaint. In Petitioner’s view, invoking a right to a due process hearing means participating in the hearing itself.

The provisions of Education Code sections 56505 and 56501.5 at issue were added by Assembly Bill (AB) 1662, effective October 7, 2005, which brought state law in conformity with the provisions of the IDEIA. “This bill’s approach to federal conformity amends provisions of state law that conflict with new federal requirements, but doesn’t repeal provisions of state law that are different than, but not in conflict with, federal law.” (Assem. Com. on Education, Rep. on Assem. Bill No. 1662 (2005-2006 Reg. Sess.) as amended May 2, 2005, p. 1.)

The IDEIA imposed a statute of limitations of two years. (20 U.S.C. § 1415(b)(6)(B).) California previously had a statute of limitations of three years. (Former Ed. Code, § 56505, subd. (j), Stats. 2004, ch. 161, § 22.) AB 1662 reduced the statute of limitations from three years to two years beginning October 9, 2006. While the statute of limitations remained three years until October 9, 2006, “. . . parties initiating a complaint during the third year are required to participate in a mediation conference (this does not abrogate the rights of a party to pursue a due process hearing subsequent to the mediation process.” (Sen. Rules Com.. Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 1662 (2005-2006 Reg. Sess.) as amended Sept. 2, 2005, p.3.; Sen. Rules Com.. Off. of Sen. Floor Analyses, 3d reading analysis of Assem. Bill 1662 (2005-2006 Reg. Sess.) as amended Sept. 8, 2005, p.3.) The legislative history does not indicate that the Legislature intended to require participation in a mediation conference prior to filing a Complaint in order to take advantage of the three-year statute of limitations.

⁷ “Mediation conference” as used in Education Code section 56505, subdivision (l) is the same thing as a “resolution session” as used in Education Code section 56501.5, subdivision (a).

Petitioner participated in an informal resolution session and may take advantage of a statute of limitations of three years. Accordingly, unless Petitioner shows that an exception to the statute of limitations applies, allegations occurring prior to May 11, 2003, are time barred.⁸

ORDER

1. District's motion to dismiss the Complaint is denied.
2. District's motion to dismiss Student's mother as a Petitioner is granted.
3. District's motion to dismiss allegations in the Complaint is denied.

Dated: July 27, 2006

Original signed by

JUDITH A. KOPEC
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

⁸ As previously discussed, Issue #1 in the Complaint alleges that an exception to the statute of limitations applies. Respondent argues in its reply that Petitioner's prior due process Complaints against the District show that no exception to the statute of limitations applies in this case. Petitioner's assertion that an exception to the statute of limitations applies is sufficient to defeat a motion to dismiss or limit his claims at this point in the proceeding. The factual basis for Petitioner's assertion will be adjudicated at hearing.