

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SCOTTS VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060440

ORDER REGARDING
RESPONDENT'S MOTION TO
DISMISS AND DIRECTING PARENT
TO PROVIDE SUPPLEMENTAL
DOCUMENTATION

On May 22, 2015, Attorney at Law, Carolyn Nedley, on behalf of Parent and Student, filed a Request for Due Process Hearing (complaint), naming Scotts Valley Unified School District as the respondent. On August 16, 2015, Student, who has not been determined to be incompetent under state law, turned 18 years old. On September 8, 2015, Ms. Nedley withdrew as counsel.

During a prehearing conference on September 14, 2015, it was discovered that Student was now 18 years old and Student had not transferred his educational rights to Parent. On Parent's motion, the PHC was continued because Parent was in the process of securing counsel for Student. Parent was advised at that time that she needed to file documentation indicating that either Student was giving Parent permission to represent him during the proceedings or that Student was transferring his educational rights to Parent. As of the date of this order, Parent had not filed such documentation.

On September 25, 2015, Scotts Valley filed a Motion to Dismiss, alleging that the complaint should be dismissed because Parent lacked standing to pursue the complaint. Further, Student had turned 18 and Parent had not filed any documentation indicating that she had Student's permission to represent Student or that Student had assigned his education rights to Parent. Office of Administrative Hearings received no response to the Motion to Dismiss from Parent or Student.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

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.

Initially when the complaint was filed in this case, Parent held Student's educational rights under the IDEA, and therefore, had standing to pursue a claim against Scott's Valley. However, Parent lost standing to pursue the claim after Student turned 18 years old. In order for Parent to have standing to pursue the claim on behalf of Student, she needs to submit documentation indicating that she has Student's permission to represent Student or that Student has assigned his education rights to Parent. Therefore, Parent must file a document signed by Student, indicating either Student has provided Parent permission to represent Student in this matter or that Student has assigned his educational rights to Parent by close of business on October 12, 2015 or OAH may dismiss this case. Scott's Valley's motion is taken under submission until October 13, 2015.

IT IS SO ORDERED.

DATE: October 5, 2015

/s/

B. ANDREA MILES
Administrative Law Judge
Office of Administrative Hearings