BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020020631

ORDER FOLLOWING PREHEARING CONFERENCE FOR HEARING BY VIDEOCONFERENCE, CONTINUING PREHEARING CONFERENCE AND HEARING, AND SETTING ORDER TO SHOW CAUSE REGARDING STUDENT'S TRANSFER OF EDUCATIONAL RIGHTS

JUNE 10, 2020

On June 8, 2020, Administrative Law Judge Cole Dalton, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent appeared on behalf of Student. Alejandra Leon and Elizabeth Swartz, Attorneys at Law, appeared on behalf of Fremont Unified School District. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

PREHEARING MOTIONS

FREMONT'S SECOND MOTION TO DISMISS

On June 3, 2020, Fremont filed a motion to dismiss on the ground that Parent lacked standing to pursue this matter as Student is a 19-year-old non-conserved person. During the discussion on the record, Parent asserted he had Student's permission to file the instant due process matter and proceed to hearing on Student's behalf.

In California, when an individual with exceptional needs reaches the age of 18, except where that individual has been determined to be incompetent under State law, all educational rights accorded to parents, under the IDEA and equivalent State law, transfer to the individual with exceptional needs. (20 U.S.C. § 1415(m); Ed. Code, § 56041.5.) A parent loses standing to bring a due process complaint once the individual with exceptional needs reaches the age of majority. (*Id.*; see also, *Neville v. Dennis* ((D. Kan., Oct. 3, 2007, No. 07-2202-CM-DJW) 2007 WL 2875376.)

State law governs both whether an individual with exceptional needs assumes their parents' IDEA rights upon reaching the age of majority and whether they can assign those rights back to parents. In *Stanek v. St. Charles Community Unit School District No. 303* (7th Cir.) 783 F.3d 634, the Seventh Circuit upheld a disabled student's right to delegate his educational rights back to his parents after he turned 18-years-old. The Seventh Circuit's decision turned on Illinois State law, which explicitly provided that all rights accorded to the student's parents under the IDEA transfer to the student when they reach the age of majority, except in limited circumstances. One of those limited

circumstances was the adult student's execution of a "Delegation of Rights" form, the terms of which are prescribed by Illinois State statute. There is no equivalent statute in California.

Here, the complaint alleges that Student agreed to be represented by Parent through a Notice of Representation dated April 3, 2019. It does not allege a transfer of educational rights from Student to Parent. In response to Fremont's previous motion to dismiss, Student filed a document entitled "Notification of Representation" for Student.

The Notification for Representation was executed by Student and Parent on April 3, 2019. The document, provides, in part, that "Parent is authorized to use any legal method [footnote omitted] in order to degrease [sic] the time that is needed to the providing of any jointly agreed upon, by [Student] and Parent, of any Special Education Service(s) and/or Accommodation(s) that is/are needed for [Student] to achieve the goal of graduating from High School…" The Notification further provides that Parent is authorized to file a complaint to defend Student's rights to receive special education services that Parent and Student agree on.

Student has not produced any documentation that transfers Student's education rights to Parent, such that Parent is conferred standing to bring the instant due process complaint. It is not enough that Student agrees that Parent can bring the instant complaint based upon contingencies that Student and Parent jointly agree upon.

ORDER ON MOTION TO DISMISS AND SETTING ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED

1. Parent is ordered to file with OAH and serve Fremont with documentation evidencing that Student has transferred educational rights to Parent, no later than 5:00 PM on June 11, 2020.
2. Fremont is ordered to file their Reply Brief, if any, no later than 10:00 AM on June 15, 2020.
3. An Order to Show Cause Regarding Student's Transfer of Educational Rights shall be held by video and audio conference on June 15, 2020, at 1:00 PM.

FREMONT'S MOTION TO QUASH

On June 3, 2020, Fremont filed a motion to quash subpoenas issued to Fremont attorneys Alejandra Leon and Jan Tomsky, former special education director Karen Russell, current special education director Fran English, and former district superintendent Kim Wallace.

For reasons stated on the record, Fremont was ordered to communicate with Student regarding which of the witnesses subpoenaed would be produced at hearing, which witnesses they would accept service of the subpoena for, and which witnesses they would provide contact information for, if any.

In the event, the parties are unable to agree as to which witnesses will be produced, for which witnesses Fremont agrees to accept service, and for Fremont to provide last known contact information:

1. Student shall file her opposition, if any, to Fremont's motion to quash no later than 5:00 PM on June 9, 2020.

2. Fremont shall file their reply brief, if any, no later than 5:00 PM on June 11, 2020.
3. OAH's ruling on Fremont's initial motion to quash will be made after June 11, 2020.

HEARING DATES, TIMES, AND LOCATION

PREHEARING CONFERENCE AND DUE PROCESS HEARING

For good cause, the hearing is continued to June 23, 24, and 25, 2020, and continue day to day at the discretion of the ALJ. The hearing shall begin at 9:30 AM each day and generally end at 3:30 PM, unless otherwise ordered. The parties anticipate it will take five days to complete the hearing. Additional hearing dates will be discussed with the ALJ during the hearing.

The PHC will be held on June 15, 2020, at 1:00 PM, directly following the Order to Show Cause hearing, in the event that hearing does not result in a dismissal of the matter.

HEARING LOCATION

OAH is authorized to conduct due process hearings by videoconference or telephone. (5 C.C.R. § 3082, subd. (g).) Based on state and federal guidance to address safety procedures due to the novel coronavirus, COVID-19, OAH will conduct the due process hearing by videoconference using the Microsoft Teams application. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams.

The parties shall immediately notify all potential witnesses of the hearing dates, and shall subpoena witnesses, if necessary, to ensure that the witnesses will appear to

testify. A party's failure to notify or subpoena a witness to testify will not be considered good cause to continue the hearing.

1. Pursuant to the discussion on the record during the PHC, and due to the number of subpoenas being requested and served on behalf of Student, for any witnesses other than Alejandra Leon, Jan Tomsky, Karen Russell, Fran English, and Kim Wallace: The parties shall meet and confer no later than 5:00 PM on June 17, 2020 regarding which witnesses Fremont agrees to produce without a subpoena, witnesses for which they will accept service of a subpoena, which witnesses they will provide contact information for, and which witnesses will be the subject of an additional motion to quash. Counsel for Fremont will initiate this meet and confer by telephone or email.

2. In the event the parties are unable to agree Fremont shall serve their second motion to quash by 5:00 PM on June 18, 2020.

3. Student shall file her opposition to the second motion to quash by 5:00 PM June 22, 2020.

All other PHC matters, if any, will be addressed at the PHC following the hearing on the Order to Show Cause, on June 15, 2020, at 1:00 PM. Both parties filed PHC statements. Other than the Motion to Dismiss, the Motion to Quash filed June 3, 2020, and a second Motion to Quash, if any, due by 5:00 PM on June 18, 2020, no prehearing motions are pending or reserved.

SETTLEMENT

The parties are encouraged to continue working together to reach an agreement before the due process hearing. The parties shall inform OAH in writing immediately if

they reach a settlement or otherwise resolve the dispute before the scheduled hearing. In addition, if a settlement is reached within five days of the scheduled start of the due process hearing, the parties shall also inform OAH of the settlement by telephone at (916) 263-0880. At the same time, the parties should send the signature page of the signed agreement or a letter withdrawing the case to OAH at https://www.applications.dgs.ca.gov/oah/oahsftweb.

If a full and final written settlement agreement is reached after 4:00 PM the day prior to hearing, the parties shall leave a voicemail message regarding the settlement at (916) 274-6035. The parties should also leave contact information such as cellular phone numbers of each party or counsel for each party.

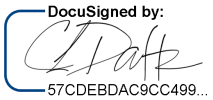
Dates for hearing will not be cancelled until the letter of withdrawal or signature page of the signed agreement has been received and processed by OAH. If an agreement in principle is reached, the parties should plan to attend the scheduled hearing unless different arrangements have been agreed upon by the assigned ALJ. The assigned ALJ will check for messages before the hearing.

If the matter settles subject to board approval, in addition to a signed copy of the signature page of the settlement agreement, the parties shall provide the date of the next board meeting. The hearing dates will not be cancelled without this information.

ORDER INCLUDES ALL RULINGS

This Order includes all rulings made at the prehearing conference. Any discussion and conversation not referenced in this Order is not binding on the ALJ conducting the hearing and may not be relied upon by the parties. The parties should be aware that, at hearing, the ALJ conducting the hearing has discretion to reconsider any part of this Order.

IT IS SO ORDERED.



Cole Dalton

Administrative Law Judge

Office of Administrative Hearings