BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS.

OAH CASE NUMBER 2022080550

ORDER DENYING MOTION TO DISMISS FOR LACK OF EDUCATIONAL RIGHTS

September 30, 2022

On August 19, 2022, Parents on behalf of Student, filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Modesto City Schools. Modesto City Schools will be called Modesto. The caption of Student's complaint stated Student was not a minor child.

On August 29, 2022, Modesto filed a response to Student's complaint with OAH. On September 16, 2022, Parents and Modesto participated in an early resolution meeting in an attempt to resolve the case. Student did not attend the meeting. On September 21, 2022, Modesto filed a Motion to Dismiss Student's complaint on the grounds that Parents did not hold educational rights for Student and therefore, lacked

standing to file a complaint on Student's behalf. Alternatively, Modesto requested OAH delay the timelines for holding a due process hearing because Parents refused to comply with the early resolution meeting requirements under the Individuals with Disabilities Education Act, called IDEA. Modesto's request to delay the case's timelines will be addressed in a separate order.

On September 26, 2022, OAH held a prehearing conference and the parties offered oral arguments regarding Modesto's Motion to Dismiss. Pursuant to OAH guidelines, Student had until 5:00 PM to file an opposition to Modesto's motion. Student filed its opposition on September 26, 2022, and argued that Student signed a document on September 16, 2022, confirming the transfer of Student's educational rights to Parents. Student further argued Modesto waived its right to challenge whether Parents held educational rights because they treated Parents as the educational rights holder.

On September 27, 2022, Modesto filed a reply to Student's opposition. Modesto argued the fact that Student assigned educational rights to Parents on September 16, 2022, proved Parents did not have standing to file the due process complaint on August 19, 2022. Further, Modesto argued, by law, there is no waiver to the issue of standing.

The United States Supreme Court made clear in *Winkelman v. Parma City School District,* that the IDEA conveys rights to parents and children, and grants parents independent, enforceable rights. (*Winkelman v. Parma City School Dist.* (2007) 550 U.S. 516, at pp. 529 and 533.) Further, the Court held parents' rights are not limited to certain procedural and reimbursement-related matters, but encompass the entitlement of a free appropriate public education for the parents' child. (*Id.* at p. 533.)

However, in California, 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 must provide any notice of procedural safeguards required by the IDEA to both the individual and the parents of the individual. All other IDEA rights assigned to a parent transfer to the individual with exceptional needs. The local educational agency must notify the individual and the parent of the transfer of rights. (Ed. Code, § 56041.5; see also 20 U.S.C. § 1415(m).)

Winkelman involved pro se parents attempting to prosecute IDEA claims in federal court on their own behalf and on behalf of their minor child. While *Winkelman* did not address whether parents retain independent rights under the IDEA once a student reaches the age of majority, the Court made clear that parents' rights are enforceable while the child is a minor. Additionally, at least one court has held that parents have standing to pursue reimbursement claims under the IDEA, even after the student has reached the age of majority and IDEA rights have transferred to the student. (*Latynski-Rossiter v. District of Columbia* (D.C. 2013) 928 F.Supp.2d 57, 62.)

In the present case, the complaint alleged issues that occurred before and after Student turned 18 on October 5, 2021. Among other remedies, Parents seek reimbursement for Modesto's alleged denial of providing Student with a free appropriate public education. Pursuant to *Latynski-Rossiter*, Parents have standing to pursue their own reimbursement claims even after Student turned 18.

However, there is a triable issue of whether Parents had standing to file the complaint to pursue IDEA claims on behalf of Student. The complaint did not mention whether Student transferred educational rights to Parents upon turning 18. Parent's declaration, under the penalty of perjury, filed with Student's opposition to the Motion to Dismiss, represented that Parents have, at all times, held educational rights for

Student. Also, filed with the opposition, was a document dated September 16, 2022, that stated "I, [Student], hereby continue to assign all my [e]ducational [r]ights to my Parents…" Student's statement is ambiguous and does not clearly indicate when Student transferred educational rights to Parents. Without further evidence, OAH cannot determine whether Parents had standing to file the August 19, 2022 complaint on Student's behalf.

What is clear, is that as of September 16, 2022, Student transferred educational rights to Parents and Parents have standing to litigate claims on Student's behalf after that date. At the due process hearing, Student must present evidence to show when Student transferred educational rights to Parents, if that date occurred before September 16, 2022. If the evidence shows that Parents did not obtain educational rights until September 16, 2022, the two-year statute of limitations for Student's claims will be adjusted to align with that date.

Modesto's arguments in favor of dismissing Student's case were unpersuasive for several reasons. First, the existing record in the case shows that Modesto regarded Parents as having the right to make educational decisions on Student's behalf after Student turned 18. Modesto's response to the complaint referred to Parents as Student's educational rights holders. The response also stated Modesto held IEP team meetings in January, and February 2022, in response to Parents' request. Further, Modesto and Parents participated in an early resolution meeting to discuss the issues in the complaint. While, by law, there is no waiver of the issue of standing, Modesto's interactions with Parents, further strengthen Parents' representation that they held educational rights for Student before September 16, 2022.

Second, Modesto ignores the holding in *Latynski-Rossiter* that allows Parents to pursue reimbursement claims even after Student turned 18. Moreover, moving forward

with the due process hearing does not prejudice Modesto because regardless of when Parents obtained educational rights, Modesto would still have to defend the complaint with respect to Parents' claims for reimbursement. Finally, because Parents now hold educational rights for Student, dismissing this case so that Parents can refile the same claims does not promote judicial efficiency or economy.

Accordingly, Modesto's Motion to Dismiss is denied. The case will proceed as scheduled.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings