BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014110451
v.	ORDER ON STUDENT'S MOTION FOR ADVISORY DECLARATION REGARDING TRANSFER OF EDUCATIONAL RIGHTS
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.	

On November 10, 2014, Parents, on behalf of 18-year-old Student, filed a due process hearing request (complaint) naming Santa Monica-Malibu Unified School District.

On December 8, 2014, Student filed a motion "to declare adult Student's right to assign educational decision making authority to his parents," seeking that OAH confirm Student's right to assign his educational rights to his parents. On December 4, 2014, District filed an opposition. On December 6, 2014 Student filed a reply.[1]

APPLICABLE LAW

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.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The jurisdiction of the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing and expressly do not include declaratory decisions about how the IDEA would apply hypothetically. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs, tit. 5, § 3089; see also *Princeton University v. Schmid* (1982) 455 U.S. 100, 102 [102 S.Ct. 867, 70 L. Ed. 2d 855] ["courts do not sit to decide hypothetical issues or to give advisory opinions"]; *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 [court deemed the

[1] The opposition and reply papers were filed by fax, and were received by OAH prior to the motion, which was filed by mail.

matter not ripe for adjudication because it was asked to speculate on hypothetical situations and there was no showing of imminent and significant hardship].)

DISCUSSION AND ORDER

The complaint alleges that Student is 18-years-old and in high school. No reference is made in the complaint to who holds educational rights. The complaint alleges that he should have been found eligible for special education and should have been assessed at parent's request. In the motion, Student argues that District must recognize Student's transfer of educational rights to Parents, but District refuses to meet informally or mediate with Parents. A copy of the document transferring educational rights is attached to the motion, but it is not accompanied by a sworn declaration.

District argues that OAH is without jurisdiction to determine if Student has transferred his educational rights, citing law giving jurisdiction to the State superior court over the appointment of a conservator for an adult who cannot manage his own affairs. Student's reply characterizes District's conservatorship argument as specious, because Student is able to manage his own affairs and has voluntarily transferred educational rights to Parents. Student argues that OAH has routinely accepted transfers of educational rights from adult students to their parents.

OAH will not give advisory opinions, and declines to do so here. However, Education Code, section 56041.5, provides that all rights accorded to parents under the IDEA transfer to the student when he reaches the age of 18. It is well within the scope of a due process hearing for the administrative law judge hearing that matter to determine if the IDEA and State law permit a non-conserved student to transfer those rights, and under which circumstances. Nothing in IDEA limits transfers of educational rights to conserved students only. Here, there is no reason to doubt that Student validly executed the assignment of rights document included with the motion. Accordingly, OAH has obtained sufficient information to allow the hearing to proceed. As to mediation, it is always voluntary, and OAH cannot force District to participate if they choose not to.

In sum, OAH has obtained sufficient information for this matter to proceed.

IT IS SO ORDERED.

Dated: December 10, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings