BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020110513

ORDER DENYING MOTION TO DISMISS AND DENYING STUDENT'S MOTION FOR SANCTIONS

DECEMBER 4, 2020

On November 19, 2020, Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Paso Robles Joint Unified School District. On November 30, 2020, OAH granted Student's Motion to Amend the complaint, and the amended complaint was deemed filed on that date.

On November 30, 2020, Paso Robles filed a Motion to Dismiss alleging Parent does not have legal standing to file a complaint on behalf of Student because Student is 18 years old and did not give educational rights to Parent. On December 3, 2020, Student filed an opposition to the Motion to Dismiss and a Motion for Sanctions.

APPLICABLE LAW AND DISUSSION

Education Code section 56041.5 provides that when an student with exceptional needs reaches the age of 18, unless the student is incompetent under state law, the school district must provide any notice of procedural safeguards to both the student and the student's parents. Once the student turns 18, special education rights transfer to the student unless student assigns these rights to parent or student is conserved.

The parties do not dispute that Student is 18 years old. Both the complaint and amended complaint name Parent and Student, separately, as petitioners, and state that Student gave educational rights to Parent. Further, Student's opposition to the Motion to Dismiss includes declarations under the penalty of perjury from Parent and Student. In their declarations, Parent and Student confirm that Student assigned educational rights and education decision-making authority to Parent. Because Student has the legal right to file a complaint, and Parent has the legal right to file a complaint on behalf of Student, the Motion to Dismiss is denied.

Special education law does not have a provision regarding sanctions. However, California Government Code section 11455.30 provides that a presiding officer in an administrative proceeding may order a party or the party's attorney to pay reasonable expenses, including attorney's fees, as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. California Code of Civil Procedure section 128.5 defines "frivolous" as completely without merit or for the sole purpose of harassing the opposing party. Here, the evidence does not show that Paso Robles filed its Motion to Dismiss for the sole purpose of harassing Student or to cause unnecessary delay. Therefore, Student's Motion for Sanctions is denied.

ORDER

Paso Robles' Motion to Dismiss is denied. The case will proceed as scheduled. Student's Motion for Sanctions is denied.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings