

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070601

ORDER FOR STUDENT TO SUBMIT
DOCUMENTATION OF
EDUCATIONAL RIGHTS

On July 18, 2012, Parent filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) naming the Newport-Mesa Unified School District (District). By an order dated December 5, 2012, OAH granted Student's second motion to amend her complaint and all timelines started over. On December 7, 2012, OAH issued a new scheduling order setting mediation for January 10, 2013, the prehearing conference for January 23, 2013 and the due process hearing to begin on January 30, 2013.

On December 10, 2012, the District filed a Motion for Notice Regarding Documentation of Educational Rights along with its response to Student's second amended complaint. The District alleges that Parent filed the second amended complaint on behalf of 18-year-old Student without any proof that Parent holds educational rights. Student has not filed a response.

APPLICABLE LAW

Under federal and California special education law, when a student eligible for special education reaches the age of 18 years, the special education rights previously held by the parent transfer to the student. (34 C.F.R. § 300.520(a)(ii)(2006); Ed. Code, § 56041.5.) Specifically, 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.

DISCUSSION

According to Student's complaint, the named "Petitioner" is listed as the Mother. Student is currently 18 years of age. To the extent it can be determined from the original complaint form, it appears that Student reached age 18 in May of 2012. Mother has presented no evidence showing that Student has either transferred her educational rights to her or has authorized Mother to pursue this action. While the law requires that parents provide appropriate documentation showing they hold educational rights on behalf of their adult children, this requirement does not prohibit nor delay the initial filing of such complaints with OAH.¹ However, in order for Mother to have standing to pursue this action on behalf of Student, Mother must provide evidence that she holds educational rights on behalf of Student. In the alternative, Student may provide further clarification that she has authorized the filing of this action herself and is represented by Ms. Whiteleather .

ORDER

1. Within five business days of this Order, Parent shall submit written proof to OAH that Student has transferred her education rights to Parent, or that Student has otherwise authorized Ms. Whiteleather to file this due process matter and represent her interests. Copies of all documents shall be served on the District.
2. If Parent and Student do not timely provide the above evidence to establish legal standing, OAH may dismiss this action without further notice.

Dated: January 7, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

¹ Mediation remains scheduled for January 10, 2013. It is up to the parties to determine whether they are willing to participate in mediation in the interim, or whether they wish to reschedule it.