

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015060692

ORDER DENYING MOTION TO
DISMISS

On June 8, 2015, Father filed a due process request naming West Contra Costa School District. On July 14, 2015, the parties participated in mediation. Student and Father participated in the mediation and, at the mediation, the parties agreed to continue the dates in this matter. On August 14, 2015, the parties submitted a joint request for continuance in this matter which was signed by Father and the attorney for West Contra Costa. The joint request for continuance was faxed from the office of the attorney for West Contra Costa. The request was granted and the hearing is set to begin on October 6, 2015.

On September 22, 2015, West Contra Costa filed a motion to dismiss the matter because Student is 19 years old and Father does not have standing to pursue the complaint on Student's behalf. A proof of service noting service through US Mail to Father, Mother and Student, was attached to the motion to dismiss. No response to the motion was received from Student.

APPLICABLE LAW

Parents have 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 Office of Administrative Hearings has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

When an individual with exception needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local education 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 education

agency shall notify the individual and the parent of the transfer of rights. (Ed. Code § 56041.5.)

DISCUSSION

In this case, the complaint was signed by Parent, not Student. There is no evidence that Student has transferred educational rights to Parent or that Student has been conserved. West Contra Costa claims that Parent has not alleged or provided any documentation that Student has authorized Father to act on his behalf as a representative in this matter.

West Contra Costa's argument is not compelling. Student attended the mediation and participated in the mediation with Father. Clearly, Student is aware of the matter, has consented to the matter being filed and has authorized Father to act on his behalf. West Contra Costa has not established that since the mediation, circumstances have arisen indicating that Student has withdrawn his consent for Father to pursue his claim. Further, West Contra Costa acknowledged Father's representation of Student when it accepted, and filed with OAH, the joint request for continuance in this matter on August 14, 2015, signed only by Father. Therefore, the motion to dismiss is denied.

ORDER

West Contra Costa's motion to dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: September 25, 2015

/s/

MARGARET BROUSSARD
Presiding Administrative Law Judge
Office of Administrative Hearings