

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT, ORANGE UNIFIED
SCHOOL DISTRICT, AND ORANGE
COUNTY DEPARTMENT OF
EDUCATION.

OAH Case No. 2015071008

ORDER GRANTING MOTION TO
DISMISS

On July 13, 2015, Student's aunt as Educational Rights Holder filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming West Orange County Consortium for Special Education (WOCCSE), Placentia-Yorba Linda Unified School District, Orange Unified School District, and Orange County Department of Education. The complaint alleges that Student was denied a free appropriate public education by the failure of the respondents to place him in a Residential Treatment Center.

On July 21, 2015, WOCCSE filed with OAH a motion to be dismissed as a party. On July 30, 2015, OAH granted the motion and WOCCSE was dismissed as a party.

On November 18, 2015, Orange filed a Motion to Dismiss, alleging that (1) Student's aunt lacks standing to exercise Student's educational rights, and (2) Orange is not the local educational agency responsible for implementing Student's Individualized Education Program.

On November 23, 2015, Orange County and Placentia-Yorba Linda filed separate requests to join Orange's motion to dismiss on grounds that Student's aunt lacks standing.

OAH received no response to the Motion to Dismiss from Student.

STATEMENT OF FACTS

Prior to the filing of the complaint, Student's aunt had been appointed Educational Rights Holder for him by the Orange County Juvenile Court. At the time of the filing of the

complaint, Student was a 17 and half years old minor residing in a group home located within the boundaries of Orange. Student was attending an OCDE special school, Harbor Learning Center Special Classes. At the time of his placement in the group home, OCDE was conducting an educationally related mental health service evaluation.

On July 28, 2015, Orange convened a 30-day review Individualized Education Program meeting. The OCDE mental health assessor informed the IEP team that she believed that Student's appropriate placement should be at a Residential Treatment Center. The IEP team recommended that an informal search be conducted for RTC placement. On August 24, 2015, the IEP team reconvened and recommend Student be placed at the Devereux Cleo Wallace in Colorado. On September 21, 2015, Orange placed Student at Devereux, and he was transported there on October 23, 2015.

Student turned 18 on November 5, 2015 and indicated that he would sign himself out of Devereux. On November 12, 2015, Student wrote a letter expressing his frustration with the RTC placement and stated: "I am done with my education here and done with this place completely." On November 14, 2015, Orange arranged for Student to be transported back to California.

APPLICABLE LAW

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.

A parent or guardian, and an emancipated pupil, among others, may file a request for a due process hearing. (Ed. Code, § 56501, subd. (a).) Once a pupil reaches the age of 18, unless he or she has been determined to be incompetent, the parent retains the right to receive any notice of procedural safeguards require under law. (Ed. Code, § 56041.5.) All other rights of the parent transfer to the pupil. (*Ibid*, *Parent v. Fresno Unified School District* (OAH Case No. 2011030648, May 3, 2011).) As a result, a parent is no longer authorized to file a request for hearing on behalf of the pupil unless the parent is appointed his or her conservator (Ed. Code, § 56028, subd. (a)(2).), or the pupil transfers his or her educational rights to the parent. OAH has dismissed a complaint with prejudice where a parent failed to produce evidence demonstrating that he had standing after a student reached 18. (*Parent v. Lincoln Unified School District* (OAH Case No. 2013090535, November 2, 2013).)

Here, Student has reached the age of 18 and his educational rights have transferred to him. Student's aunt has not responded to the motion and has not demonstrated that Student has continued to assign his educational rights to her or that he had been conserved. The moving parties have provided evidence, in the form of Student's letter, that he no longer desires to continue with educational services.

ORDER

The Motion to Dismiss by Orange, and joined by Placentia-Yorba Linda and Orange County, is granted. The matter is dismissed.

IT IS SO ORDERED.

DATE: November 24, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings