

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110388

ORDER TO SHOW CAUSE WHY  
CASE SHOULD NOT BE DISMISSED

JANUARY 24, 2022

On November 15, 2021, Student's Parent filed a Request for Due Process Hearing, with the Office of Administrative Hearings, naming Fremont Unified School District. The Office of Administrative Hearings is called OAH. The complaint alleges Student is represented by Parent and Student's Aunt.

On January 20, 2022, Fremont Unified School District filed a Motion to Dismiss on the basis Parent lacked standing because Student turned 18 years old on January 6, 2022, and there has been no showing that Student is conserved or that he transferred his educational rights to Parent or Aunt.

On January 21, 2022, Student's Aunt filed a response to Freemont Unified School District's Motion to Dismiss. Aunt alleges she is assisting Student's Parent and Student in this due process matter, and that Student will provide testimony under oath at the due process hearing authorizing Aunt to pursue this matter on Student's behalf.

Education Code section 56041.5 provides that 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. As a result, a parent is no longer authorized to file a request for hearing on behalf of a student unless the parent is appointed his or her guardian or the student transfers his or educational rights to the parent or other representative.

Initially when the due process hearing request was filed, Parent held Student's educational rights and therefore had standing to pursue a claim. However, Parent lost standing to pursue educational claims after Student turned 18 years old. For Parent and Aunt to have standing to pursue a claim on behalf of Student, they must provide documentation verifying that either Student transferred his educational rights to Parent or Aunt or that Parent or Aunt have obtained legal conservatorship over Student. Accordingly, unless Parent or Aunt provide such proof that they possess Student's educational rights or hold legal conservatorship over him, OAH will dismiss the complaint.

## ORDER

1. Parent and Aunt are ordered to file with OAH and serve Fremont Unified School District with documentation establishing that they hold Student's educational rights or legal conservatorship over Student no later than 5:00 pm on January 27, 2022.
2. Failure by Parent or Aunt to produce documentation that they possess Student's educational rights or that Student is conserved will result in a dismissal of this matter.
3. Parties are to file their Prehearing Conference statements by 5:00 pm, on January 24, 2022.
4. OAH will address Fremont Unified School District's Motion to Dismiss and whether Parent or Aunt have standing to proceed with the due process complaint at the Prehearing Videoconference on January 28, 2022, at 1:00 pm.

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings