

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CHABOT COLLEGE.
OAH CASE NUMBER 2023110891

ORDER FOLLOWING PREHEARING CONFERENCE FOR
HEARING BY VIDEOCONFERENCE, AND DISMISSING DUE
PROCESS HEARING REQUEST WITHOUT PREJUDICE

JANUARY 11, 2024

On January 8, 2024, Administrative Law Judge Robert G. Martin, Office of Administrative Hearings, held a prehearing conference by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH. The prehearing conference is called a PHC.

Parent appeared on behalf of Student. Student also attended the PHC. Attorney Amy Brandt appeared on behalf of Chabot College, referred to as Chabot. The PHC was recorded. Based upon discussion with the parties, the ALJ issues the following order:

MOTION TO DISMISS

Parent on behalf of Student filed the complaint on November 27, 2023, naming Chabot. On January 3, 2024, Chabot filed a Motion to Dismiss Student's complaint, on grounds of lack of OAH jurisdiction over the dispute, Parent's lack of standing to bring a due process hearing action on behalf of Student, and Parent's failure to properly serve the complaint on Chabot.

In the alternative, if the matter was not dismissed, Chabot requested a continuance of the due process hearing, and that the name of respondent in this case be changed from Chabot College to Chabot-Las Positas Community College District.

DISMISSAL FOR LACK OF JURISDICTION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called the IDEA, is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

A free appropriate public education, called a FAPE, means special education and related services provided at public expense, that include an appropriate preschool, elementary school, or secondary school education, provided in conformity with the individualized education program, called an IEP, that is required under section 1414(d) of the IDEA. (20 U.S.C. § 1401(9).)

Public elementary and secondary schools are responsible for academic and general vocational instruction from kindergarten and grades 1 to 12. (Ed. Code, § 66010.3; 20 U.S.C. § 1401(27).) The elementary and secondary schools are responsible for preparing pupils for postsecondary instruction that the pupil may participate in after

grade 12 (*ibid.*), but are not responsible for providing such instruction. Public postsecondary education in California after grade 12 is provided by the California Community Colleges, the California State University, and the University of California. (Ed. Code, § 66010.95.)

A state's obligation under the IDEA to provide a FAPE to all children with disabilities does not apply to children with disabilities who have graduated from high school with a regular high school diploma. (34 C.F.R. § 300.102(a)(3) (2006).) Postsecondary schools are not required to comply with the IDEA's provisions for its students who have graduated from high school with a regular high school diploma, and are not subject to a due process hearing for failing to do so.

While other laws protecting persons with disabilities, such as Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), and Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12131 et seq.), may apply to postsecondary students attending public institutions, the IDEA generally does not. OAH's jurisdiction to hold hearings does not extend to claims against a postsecondary educational institution that are based on Section 504, or Title II of the Americans with Disabilities Act.

Under the IDEA and California Education Code, a party has 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) [a parent or public agency has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program

appropriate for a child, including the question of financial responsibility].) A party presenting such a complaint is entitled to an impartial due process hearing (20 U.S.C. § 1415(f)(1)(A); 34 C.F.R. § 300.511(a)), which in California is conducted by OAH. (Ed. Code, § 56504.5.) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

On its face, Student's due process hearing request against Chabot, a postsecondary school, did not present a claim arising under the IDEA over which OAH has jurisdiction. The complaint used the due process hearing request form provided online by OAH. It alleged Student was 20 years old, and presently attending Chabot. The complaint alleged that Student needed a personal in-class aide during the 2023-2024 school year in Student's English and math classes, and Chabot College had not provided Student such an aide.

At the PHC, Parent confirmed that Student was not placed at Chabot by a secondary school, but had enrolled in Chabot after receiving a regular high school diploma. Because the IDEA could not apply to Student and Chabot under the facts presented in the complaint or at the PHC, there was no basis for OAH jurisdiction, and Student's due process claim was dismissed at the PHC, without prejudice.

MOTION TO DISMISS FOR LACK OF STANDING (NON-CONSERVED ADULT)

Education Code section 56041.5 provides that when a student with exceptional needs reaches the age of 18, unless the student has been determined to be incompetent under state law, all parent's rights under the IDEA are transferred to the Student. These rights include the right to file a due process hearing request under the IDEA. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

The due process hearing request filed on behalf of Student indicated Mother was requesting the due process hearing. It also indicated Student was born in February 2003, and was 20 years old when the due process hearing request was filed. The due process hearing request did not indicate Student had been determined to be incompetent or granted Mother educational decision-making rights. On its face, the due process hearing request did not indicate a basis for Mother to have standing to assert claims arising from the IDEA on Student's behalf.

At the PHC, Parent confirmed that Student had not been determined to be incompetent, and that Parent was not Student's conservator, and did not otherwise hold Student's educational rights. Mother's complaint on Student's behalf was therefore dismissed at the PHC, without prejudice, on the additional grounds that it failed to allege facts establishing Mother's standing to assert claims arising from the IDEA on Student's behalf.

It was not necessary to determine the issue of whether Parent's service of the due process hearing request on Chabot by email was insufficient and required dismissal of the complaint. Chabot's additional motions for a continuance of the due process hearing dates, and to change the name of the respondent, were mooted by dismissal of the due process hearing request.

ORDER

Chabot's Motion to Dismiss is granted. The matter is dismissed, without prejudice.

This Order makes no determination on the issue of whether Parent's service of the due process hearing request on Chabot by email was insufficient and required

dismissal of the complaint, or Chabot's motion to change the name of the respondent from Chabot College to Chabot-Las Positas Community College District.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Robert G. Martin". The signature is fluid and cursive, with a prominent initial "R" and a stylized "M".

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings