BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021010796

ORDER DENYING STUDENT'S PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM FOR STUDENT

FEBRUARY 09, 2021

On January 28, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Oakland Unified School District. The Office or Administrative Hearings is referred to as OAH.

On February 3, 2021, Student filed a Petition for Appointment of Guardian Ad Litem for Student. Student's Petition included a Declaration by Student's parent consenting to act as guardian ad litem and holder of Student's educational rights. OAH received no response from Oakland Unified School District.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) 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 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) [party 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].) 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.)

OAH lacks jurisdiction to issue declaratory decisions in special education matters regarding the applicability of a statute, regulation or judicial precedent unless otherwise expressly authorized by the IDEA. (Gov. Code, §§ 11465.10-11465.60; Cal. Code Regs. Tit. 5, § 3089.)

All rights accorded to parents under the IDEA are transferred to a child with a disability when the child reaches the ages of majority under State law, except for a child with a disability who has been determined to be incompetent under State law. (20 U.S.C. § 1415(m)(1); Ed. Code, § 56041.5.) .) The IDEA requires the states to establish procedures for a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent but who is determined not to have the ability to provide informed consent, for appointment of the parent or another

appropriate individual to represent the educational interests of the child. (20 U.S.C. § 1415(m)(2); 34 C.F.R. § 300.520(b).)

Student's petition alleges he turned 18 on January 29, 2020. Student asserts he lacks the ability to provide informed consent for his educational decisions. Student contends no petition for appointment of a guardian ad litem or conservator has yet been filed with any court in the state of California, but that parent is in the process of applying for a conservatorship over Student. Student argues that California does not have a procedure in place for appointment of a parent or other individual when an eligible child has not been deemed incompetent but is unable to provide informed consent. Student contends, therefore, that OAH, should appoint Student's parent as guardian ad litem and holder of Student's educational rights for purpose of pursuing his claim in this due process proceeding.

Student cites to no legal authority supporting his argument that OAH has authority to appoint parent as guardian ad litem. OAH lacks authority to provide an advisory opinion on this issue and declines to do so here.

The California Probate Code and Code of Civil Procedure establish the process for the appointment of a conservator or guardian ad litem for an individual who lacks legal capacity to make decisions. (See generally Probate Code, § 1800, et seq.; Code Civ. Proc., § 372.) In the event Student is unable to make informed decisions about his educational decisions, Parent may seek appointment of a conservator or guardian

ad litem through the California Superior Court in accordance with applicable law, including a limited appointment for just education decisions. OAH lacks jurisdiction to appoint parent as Student's guardian ad litem.

ORDER

Student's Petition for Appointment of Guardian Ad Litem is denied.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings