

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAH Case No. 2014010199

CLOVIS UNIFIED SCHOOL DISTRICT,

v.

STUDENT.

DECISION

Clovis Unified School District filed a due process hearing request with the Office of Administrative Hearings, State of California, on January 7, 2014, naming Student. The matter was continued for good cause on January 24, 2014.

Administrative Law Judge Joy Redmon conducted a telephonic prehearing conference in this matter on March 3, 2014. Karen E. Samman, Attorney at Law, appeared on behalf of Clovis. Laurene Bresnick, Attorney at Law, appeared on behalf of Student.

During the PHC the parties made a joint request to submit this matter for decision on the written record. Each party waived their right to present witnesses and conduct an in-person hearing. The parties' request was granted and they were ordered to submit a stipulated fact statement, a joint evidence binder, and simultaneous closing briefs to OAH by Friday, March 21, 2014. The documents were timely received and the matter submitted for decision.

ISSUE¹

Was Student legally exited from special education based on her receipt of a certificate of proficiency?

SUMMARY OF DECISION

This decision holds that a certificate of proficiency is not a regular high school diploma and was not a valid basis upon which to exit Student from special education. As set forth below, the Individuals with Disabilities Education Act (IDEA) contains specific requirements for exiting pupils from special education, including upon receiving a regular high school diploma. State law is consistent with the IDEA with respect to its requirements for exiting a student from special education. A certificate of proficiency does not meet either statutory requirements; accordingly, Clovis has failed to meet its burden and Student was not properly exited from special education.²

¹ The issue has been rephrased for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

² Whether Clovis' obligation to make a free appropriate public education available to Student terminated at any point after she was awarded the certificate of proficiency is not at issue in this case and is not addressed in this decision.

FACTUAL FINDINGS

The parties submitted a stipulated fact statement and joint evidence binder. Each stipulated fact was considered and weighed. The factual findings below contain the facts necessary to determine the issue presented in this case.³

1. Student is a 19-year-old college student, born February 26, 1995. Student currently lives with her parents in Friant, California, after recently returning from Coeur d'Alene, Idaho, where she attended North Idaho College, a community college, and lived at Milestones for Young Adults, a program designed to help students transition to adulthood.

2. Student first became eligible for special education and related services on December 7, 2010, when she was in the 10th grade. She was found eligible under Other Health Impairment and Orthopedic Impairment due to the physical and emotional effects of spinal surgery to remove a tumor. In November 2011, while in the 11th grade, Student took and passed both the English Language arts and mathematics portions of the California High School Exit Examination, which is one requirement to receive a regular high school diploma in California.

3. In January 2012, Student was transitioned by her individualized education program team to home hospital instruction through June 2012 per a doctor's note concerning further medical treatment. On May 1, 2012, the IEP team reconvened to discuss continued placement for Student through the extended school year. This was the last IEP team meeting Clovis convened for Student before her exit from Clovis.

4. In Spring 2012, when Student was 17 years old, Student's mother reviewed options for Student to move on to her post-secondary education. Student's mother spoke with Student's case manager, Andrea Smith, on April 10, 2012. Ms. Smith

³ (See Evid. Code, § 210.)

indicated to Student's mother that she should weigh the options between a general education development test and a certificate of proficiency.

5. Student's parents decided that Student should take the California High School Proficiency Exam so that she would be able to leave high school and begin college. Student's parents provided their approval for Student to take the exam and, thereafter, to leave high school.

6. In Spring 2012, Student took and passed the proficiency exam and was awarded a certificate of proficiency from the State Board of Education. The California Department of Education publishes information regarding the certificate of proficiency and the exam that must be passed to receive the certificate. The exam consists of two parts: an English-language arts section and a mathematics section. According to information CDE publishes, a certificate of proficiency is, "not equivalent to completing all coursework required for regular graduation from high school." California has adopted numerous course requirements in addition to English language arts and mathematics to be eligible for a regular high school diploma. Student did not complete all of these course requirements.

7. The face of the certificate of proficiency reads:

Student has met the standards of proficiency established by the California Department of Education for basic skills taught in public schools. As established by state law, this Certificate of Proficiency is awarded by the State Board of Education and shall be recognized for all purposes as the legal equivalent of a high school diploma.

The phrase "shall be recognized for all purposes," although printed on the certificate, does not appear in the statute that authorizes the certificate or in its implementing regulations.

8. The certificate of proficiency was awarded to Student on June 16, 2012. Clovis received a copy of Student's certificate from her mother on August 20, 2012. By the end of the spring semester 2012, Student completed her junior year of high school with 123.5 credits toward the 240 credits required to meet Clovis' graduation requirements. Therefore, in addition to not completing the course requirements, Student had not met the local graduation requirements necessary to obtain a regular high school diploma.

9. On August 20, 2012, Student's case manager, Andrea Smith, outside of the IEP process, prepared a Summary of Academic Achievement and Functional Performance (Summary), exiting Student from special education. The Summary did not indicate that Student met Clovis' requirements to graduate with a regular high school diploma. Instead, the Summary indicated that Student passed the proficiency exam. Ms. Smith mailed the Summary to Student's Mother on August 22, 2012. This is the only written notice Clovis sent informing Student and her Parents that she was exited from special education.

10. In August 2012, when Student was 17 years old, she began attending Fresno Pacific University. The following month, Student left Fresno Pacific to obtain additional medical treatment.

11. On February 26, 2013, Student turned 18 years old. At no time did Student or her parents request that Student be re-admitted to high school.

12. On August 9, 2013, Student sent a letter to Clovis requesting to "re-open" her IEP. Specifically, Student informed Clovis that she required placement at Milestones for Young Adults in Coeur d'Alene, Idaho, and expected that Clovis would cover the

costs of that placement. Ms. Bass, the special education local plan area administrator, responded that Student, by receiving her certificate of proficiency, had been exited from special education.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA⁴

1. Jurisdiction over this matter arises under the IDEA, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006)⁵ et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000, et seq.) The party filing the complaint, in this case Clovis, has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); see Ed. Code, § 56000, subd. (a).)

2. A FAPE means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).) "Special education" is instruction specially designed to meet the

⁴ Unless otherwise indicated, the legal citations in the introduction and in the sections that follow are incorporated by reference into the analysis of each issue decided below.

⁵ All subsequent references to the Code of Federal Regulations are to the 2006 version.

unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031.)

AGE RESTRICTION FOR SPECIAL EDUCATION ELIGIBILITY

3. Clovis asserts that based upon Student's current age and the fact that she received a certificate of proficiency, she does not meet the special education eligibility criteria established in Education Code section 56026, subdivision (c)(4). This provision, however, does not apply in the instant case because Student was 17 when she received her certificate of proficiency and this statute governs eligibility for those 19 through 21 inclusive.

CERTIFICATE OF PROFICIENCY AND REGULAR HIGH SCHOOL DIPLOMA

4. Clovis asserts that because California's compulsory attendance law states that "[t]he certificate of proficiency shall be equivalent to a high school diploma...," the certificate has the same legal effect as a "regular high school diploma" under the IDEA and California's special education statutes. (Ed. Code, § 48412, subd. (b).) The issue posed in this case, however, is not just the meaning of Education Code section 48412, subdivision (b). Rather, the more important question is whether a certificate of proficiency meets the statutory criteria under the IDEA and California's special education law so that Clovis legally exited Student from special education.

5. The obligation to make a FAPE available 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)(i); Ed. Code, § 56026.1, subd. (a).) That exception, however, does not apply to children who have graduated from high school but have not been awarded a *regular* high school diploma. (34 C.F.R. § 300.102(a)(3)(ii), italics added.) In California, a "regular high school diploma" means a diploma conferred on a pupil who has met *all* local and state high school graduation

requirements (Ed. Code, § 56026.1, subd. (b), italics added.) The IDEA and California law governing special education provide that for the purpose of terminating the obligation to provide a FAPE to a student, a regular high school diploma does not include an alternative degree that is not fully aligned with the State's academic standards, such as a certificate or a GED. (34 C.F.R. § 300.102(a)(3)(iv); Ed. Code, § 56026.1, subd. (c).)

6. The requirements to receive a regular high school diploma are far more rigorous than those required to obtain a certificate of proficiency. The proficiency exam consists of two portions: English language arts and mathematics. In 2012, when Student received her certificate of proficiency, State law specified that to receive a diploma of graduation from high school, a student was required to complete courses in 13 specified areas including in subjects such as American government, economics, and foreign language, which according to Student's transcript, she had not completed. (Former Ed. Code, § 51225.3, added by Stats. 2009, ch. 223, § 2.) Additionally, to meet Clovis' local graduation requirements to receive a regular high school diploma, Student would have had to earn a minimum of 240 credits. At the time she left school, Student had only earned 123.5. The certificate certifies "proficiency" and "competency" in "basic skills," not academic standards. (Ed. Code, §§ 48412, subds. (a) & (b).) Under the IDEA and California law governing special education, therefore, a certificate of proficiency does not constitute a regular high school diploma because it is not fully aligned with California's academic standards and does not meet the local graduation requirements.

7. Clovis argues that despite the language in the IDEA and corresponding state statutes, the Legislature essentially carved out an exception by stating that a, "certificate of proficiency shall be equivalent to a high school diploma." (Ed. Code, § 48412 subd. (a).) This argument fails. This general education provision does not prevail over federal and State law governing special education students. As determined above, a certificate of proficiency does not constitute a regular high school diploma under the

IDEA and corresponding State statutes; however, even the plain language of Education Code section 48412 does not support Clovis' position.

8. When interpreting statutes, courts use a three-step analysis by first looking to the plain meaning of the statutory language, then to its legislative history, and then to the reasonableness of a proposed construction, if necessary. (*MacIssac v. Waste Management Collection and Recycling, Inc.*, (2005) 134 Cal.App.4th 1076, 1082 (quoting *Riverview Fire Protection Dist. v. Workers' Comp. Appeals Bd.* (1994) 23 Cal.App.4th 1120, 1126,).) Additionally, the words of a statute are to be construed in context with consideration of the statutory scheme in which they exist. (*MacIsacc v. Waste Management, supra* at p. 1083). The language of section 48412 is ambiguous to the extent that it does not say for what purpose the certificate of proficiency shall be equivalent to a high school diploma. Clovis argues that in considering the plain meaning of the statute, one must also consider the language on the certificate itself. The certificate Student received from CDE states in relevant part that it, "shall be recognized for all purposes as the legal equivalent of a high school diploma." Clovis argues that "all purposes" necessarily includes exiting her from special education. The statement "recognized for all purposes" does not appear in the law. Education Code section 48412 subdivision (a) merely states in relevant part that the certificate of proficiency shall be equivalent to a high school diploma. No weight is given to the language printed on the certificate because it is not consistent with the statute that authorizes the certificate itself. The Legislature could have chosen to include the language "for all purposes," in the law but did not. Additionally, such intent could have been declared when adopting regulations under Education Code section 48412 but was not. (Cal. Code Regs., tit. 5, § 11520, et. seq.) These regulations address compulsory attendance. The language of the statute, despite an apparent ambiguity, does not carve out an exception to the IDEA and state special education laws governing regular high school diplomas.

9. Regarding the reasonableness of the proposed construction, Clovis argues that if the certificate of proficiency does not have the effect of exiting a student from special education after a student stops attending school, it would lead to an absurd result because Clovis would still be responsible for continuing obligations under the IDEA even though the student has moved on. Clovis asserts that IEP teams would be required to meet, hold triennial reviews, and make placement offers for students that have entered their post-secondary occupations. That result, however, is consistent with the IDEA and state law. Irrespective of a certificate of proficiency, if an IEP team determines that special education services are required beyond a student's 18th birthday, the district of residence continues to be responsible for providing special education services to pupils between the ages of 18 to 22 years. (Ed. Code, § 56041.) Alternatively, if an IEP team believes that a student, including one who has received a certificate of proficiency, is no longer eligible for special education, the law provides for reassessment and specifically charges the IEP team to consider whether a pupil continues to need special education and related services. (Ed. Code, § 56381, subd. (b)(2)(c).)

10. Finally, Clovis argues that if the certificate of proficiency does not operate as a regular high school diploma to exit her from special education, it amounts to treating her accomplishment differently than that of her non-disabled peers based solely upon her disability, thus creating a discriminatory effect. There is nothing in the record that supports this contention. Moreover, students eligible for special education are treated differently than their non-disabled peers even upon receiving a regular high school diploma. For example, to validly exit a student from special education after receiving a regular high school diploma, the local education agency must provide the student with a summary of their academic and functional performance that includes recommendations on the manner in which to assist the student meet his or her

postsecondary educational goals. (20 U.S.C. § 1414(c)(5)(B)(ii); Ed. Code, § 56381, subd. (h)(i)(2).) There is no such requirement for non-disabled students. The additional protection provided to special education students, including not converting a certificate of proficiency into a regular high school diploma, is reasonable and does not create a discriminatory effect for Student.

11. A certificate of proficiency is not the same as a regular high school diploma under the IDEA and California law governing special education. Clovis did not establish that Education Code section 48412 created an exception to the requirements to validly exit a student from special education. In light of the forgoing, Clovis did not validly exit Student from special education based upon her receiving a certificate of proficiency.

ORDER

Student was not legally exited from special education due to her receipt of a certificate of proficiency.

PREVAILING PARTY

Pursuant to Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on the single issue in this case.

RIGHT TO APPEAL

This decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: April 18, 2014

/s/

JOY REDMON

Administrative Law Judge

Office of Administrative Hearings