

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2021030191

STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

DECISION

May 06, 2021

On March 4, 2021, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student's biological mother and foster mother, referred to as Parents, on behalf of Student, naming Chaffey Joint Union High School District. Administrative Law Judge Cararea Lucier heard this matter by videoconference on April 27 and 28, 2021.

Sheila C. Bayne represented Parents, with assistance from law clerk Andrew Price and special education advocate, James D. Peters III. Parents and Student appeared at various times on Student's behalf. Sundee Johnson represented Chaffey Joint Union

High School District. Kelly Whelan, Director of Special Education, attended all hearing days on Chaffey's behalf. Dr. Royal Lord attended all hearing days on behalf of West End Special Education Local Plan Agency, referred to as SELPA.

The record was closed and the matter submitted on April 28, 2021.

ISSUES

1. Did Chaffey Joint Union High School District deny Student a free appropriate public education, referred to as FAPE, by assigning Student to distance learning without continuing to provide in-person services, from March 2020, through the end of the 2019-2020 school year and extended school year, referred to as ESY?
2. Did Chaffey deny Student a FAPE by assigning Student to distance learning without continuing to provide in-person services for the 2020-2021 school year, through March 4, 2021?
3. Did Chaffey deny Student a FAPE by assigning Student to distance learning without evaluating Student and providing necessary accommodations from March 2020, through the end of the 2019-2020 school year and ESY?
4. Did Chaffey deny Student a FAPE by assigning Student to distance learning without evaluating Student and providing necessary accommodations for the 2020-2021 school year, through March 4, 2021?
5. From March 2020, through March 4, 2021, did Chaffey deny Student a FAPE by failing to develop an individualized education program, referred to as IEP, that was reasonably calculated to enable Student to receive educational benefit, by:
 - a. Failing to offer a sufficient amount of services and an appropriate service model of individual or group services, in the areas of specialized academic

instruction, occupational therapy, speech and language therapy, and adapted physical education;

- b. Failing to address Student's need for proper academic goals; and
 - c. Failing to offer sufficient intensive individual services in the form of a one-on-one aide?
6. From March 2020, through March 4, 2021, did Chaffey deny Student's rights by failing to address Student's alleged regression as a result of being assigned to distance learning?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a

free appropriate public education to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii). Student had the burden of proof in this matter. (*J.G. v. Department of Education* (9th Cir. 2019) 772 Fed.Appx. 567.) The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

At that the time of the hearing, Student was an 18-year-old boy who resided in a group home within Chaffey Joint Union High School District with his foster parent. He qualified for special education and related services under the eligibility category of intellectual disability.

PARENTS' STANDING TO PROCEED WITH DUE PROCESS HEARING

Parents contend that Student's biological mother holds Student's educational rights, but that as a public policy argument, it would be unfair to require proof of her legal standing in this matter. Parents also argue that Student lacks capacity to transfer his educational rights to Parents due to his intellectual disabilities.

Chaffey contends that Parents do not have standing to proceed with this matter because Student has turned 18-years-old and Parents have not provided proof that Student transferred his educational rights. Chaffey further argues that if Student lacks

capacity to transfer his educational rights, Parents could pursue a conservatorship, which would allow them to bring a claim on behalf of Student.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031,56032, 56341, 56345, subd. (a) and 56363 subd. (a); 34 C.F.R. §300.501.)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Andrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

Under the IDEA, a State may provide that the education rights of the parent transfer to student when the student reaches the age of majority under that State's laws. (20 U.S.C. § 1415(m); 34 C.F.R. §300.520(a) (2006).)

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 is authorized to file a due process request on behalf of a pupil over 18 years of age if the pupil transfers his or her educational rights to the parent. (See *Student v. Lincoln Unified School District* (November 26, 2013) OAH Case No. 2013090535 [Order Reconsidering and Vacating Dismissal].)

OAH may dismiss a matter for lack of standing if a party cannot reliably demonstrate that the party has the legal authority to bring the claim on behalf of the individual with a disability. (See *Student v. Fresno Unified School District* (May 3, 2011) OAH Case No. 2011030648 [Order Granting Motion to Dismiss]; *Student v. Scotts Valley Unified School District* (October 5, 2015) Case No. 2015060440 [Order Granting Motion to Dismiss and Directing Parent to Provide Supplemental Documentation].) The party initiating the due process hearing bears the burden of proof with respect to standing. (See *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

On April 18, 2019, Chaffey advised Student that upon turning 18 years old he would have the right to make all decisions regarding his educational rights. In Student's annual IEP of April 23, 2020, Chaffey included a statement that if Student reached the age of 18-years-old without being conserved, he would have the right to receive all information about his educational program and the right to make all decisions regarding his education.

On March 4, 2021, Student's biological mother and foster mother initiated this due process hearing on behalf of Student. At the prehearing conference of April 20, 2021, and on the first day of the hearing, counsel for Parents confirmed that Parents

sought a remedy of prospective assessments, prospective services, compensatory education to Student, and modifications to Student's IEP. None of Student's proposed exhibits provided to OAH for the hearing contained receipts or invoices for parental reimbursement.

On March 8, 2021, Student turned 18 years old, and all rights under the IDEA transferred to him. (Ed. Code, § 56041.5.)

On April 27, 2021, OAH convened a due process hearing in this matter. Neither Parents nor Student appeared at the commencement of the hearing. Rather, Parents' counsel, law clerk, and advocate appeared on Parents' behalf. Upon discussion, counsel for Parents argued that she had authority to proceed without her clients or Student, and that Student had transferred his educational right to Parents. Chaffey objected that Parents did not provide documentation to the school district supporting the claim that Student transferred his educational rights. Parents subsequently appeared at the hearing intermittently.

The ALJ allowed the hearing to go forward for the first day, but ordered Parents' counsel to provide either: (1) documentation that Student transferred his educational rights to one or both of Parents; or (2) a statement from Student, under oath, that he permitted the matter to proceed. The ALJ ordered both Parents and Student to appear for this discussion at 9:30 AM on April 28, 2021, but clarified that Parents and Student were not required to attend the remainder of the hearing once legal standing to proceed was established.

On April 28, 2021, OAH convened the second day of the due process hearing in this matter. Initially, neither Parents nor Student appeared. Upon discussion, counsel for Parents was able to contact her clients, and Parents and Student appeared.

Counsel for Parents refused to comply with the Order from OAH of April 27, 2021, directing Parents to provide documentation of the transfer of educational rights or a sworn statement by Student on the record in this matter. Counsel argued that she had an informal document purporting to assign educational rights but refused to produce it to OAH. Counsel argued that Student lacks capacity to transfer or assign his educational rights, and she would not allow him to make any statements under oath.

Counsel for Parents asserted that it would be unfair to Parents to require a conservatorship or court order transferring the Student's educational rights under the IDEA because the process can take a long time. However, counsel also repeatedly refused to allow Student to make a statement indicating he did not object to the matter proceeding, on the grounds that he lacked capacity.

Further, Student's complaint states that he lives with his "foster parent/guardian." If Student is a foster child, then Student could have obtained a juvenile court order that permitted Parent or Foster Parent to proceed with this action after Student's 18th birthday. (See Welf. & Inst. Code, §§ 361, subd. (a)(1), 366, subd. (a)(1), and 366.27.)

California law does not assume that students with intellectually disabilities are legally incompetent upon their 18th birthday. (See Evid. Code, § 700.) As the petitioning parties, Parents had the burden of proof to establish they had the legal authority to act on behalf of Student. Parents, through counsel, refused to provide evidence to support their claim, despite being given significant leeway by the ALJ to provide informal or verbal statements that supported their position. Nor did Student's attorney permit the Administrative Law Judge to question Student to determine competency. (Evid. Code, § 701.) Finally, Student's attorney did not request a

continuance at any time to permit Parent or Foster Parent to obtain the appropriate court order.

Parents failed to establish they had the legal authority to bring the claim on behalf of the Student, an adult not deemed incompetent by any court of law. As such, the matter was dismissed.

CONCLUSIONS AND PREVAILING PARTY

Pursuant to California 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.

Issue 1: Parents failed to meet their burden of proof that they had standing to bring the issue of whether Chaffey Joint Union School High District denied Student a FAPE by assigning Student to distance learning without continuing to provide in-person services, from March 2020, through the end of the 2019-2020 school year and ESY. Chaffey prevailed on Issue 1.

Issue 2: Parents failed to meet their burden of proof that they had standing to bring the issue of whether Chaffey Joint Union School High District denied Student a FAPE by assigning Student to distance learning without continuing to provide in-person services for the 2020-2021 school year, through March 4, 2021. Chaffey prevailed on Issue 2.

Issue 3: Parents failed to meet their burden of proof that they had standing to bring the issue of whether Chaffey Joint Union School High District denied Student a FAPE by assigning Student to distance learning without evaluating Student and

providing necessary accommodations from March 2020, through the end of the 2019-2020 school year and ESY. Chaffey prevailed on Issue 3.

Issue 4: Parents failed to meet their burden of proof that they had standing to bring the issue of whether Chaffey Joint Union School High District denied Student a FAPE by assigning Student to distance learning without evaluating Student and providing necessary accommodations for the 2020-2021 school year, through March 4, 2021. Chaffey prevailed on Issue 4.

Issue 5: Parents failed to meet their burden of proof that they had standing to bring the issue of whether Chaffey Joint Union School High District denied Student a FAPE by failing to develop an IEP that was reasonably calculated to enable Student to receive educational benefit, by: (a) Failing to offer a sufficient amount of services and an appropriate service model of individual or group services, in the areas of specialized academic instruction, occupational therapy, speech and language therapy, and adapted physical education; (b) Failing to address Student's need for proper academic goals; and (c) Failing to offer sufficient intensive individual services in the form of a one-on-one aide. Chaffey prevailed on Issue 5.

Issue 6: Parents failed to meet their burden of proof that they had standing to bring the issue of whether Chaffey Joint Union School High District denied Student a FAPE from March 2020, through March 4, 2021, by failing to address Student's alleged regression as a result of being assigned to distance learning. Chaffey prevailed on Issue 6.

ORDER

1. All Parents' requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/

Cararea Lucier

Administrative Law Judge

Office of Administrative Hearings