

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
OREGON DEPARTMENT OF EDUCATION**

IN THE MATTER OF THE EDUCATION OF  <b>STUDENT AND BEND-LAPINE SCHOOLS</b>	) <b>RULING ON SHOW CAUSE HEARING AND FINAL ORDER OF DISMISSAL</b> ) ) OAH Case No. 2024-ABC-06648 ) Agency Case No. DP 24-015
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**HISTORY OF THE CASE**

On July 31, 2024, Parent, on behalf of Student, filed a request for due process hearing with the State Superintendent of Public Instruction. In that complaint, Parent alleged that Bend-La Pine Schools (the District) violated sections of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C § 1400 *et seq.* and the corresponding administrative rules.

On August 1, 2024, the Department of Education referred the complaint to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Alison G. Webster to preside at hearing.

On August 19, 2024, counsel for the District submitted a challenge to the sufficiency of Parent’s hearing request. On October 21, 2024, the ALJ denied the District’s sufficiency challenge as untimely under OAR 581-015-2350.<sup>1</sup>

On September 8, 2024, counsel for the District filed the District’s Motion for Order to Show Cause Re: Parent Standing and Student Residency and Enrollment; Alternative Motion for Partial Dismissal Based on Lack of Timeliness (the Motion), with supporting documentation.

On September 9, 2024, ALJ Webster convened a prehearing conference via telephone. Attorneys Melinda Thomas and Joel Hungerford participated for the District. Parent participated without counsel. During the conference, on the District’s request, the ALJ found good cause to extend the hearing period and final order due date beyond 45 days. In addition, the ALJ set the schedule going forward, including the deadline for Parent’s response to the Motion.

On September 23, 2024, in accordance with the schedule established during the prehearing conference, Parent filed her Response to the Motion. On September 30, 2024, the ALJ issued a Ruling on District’s Motion for Order to Show Cause and Alternative Motion of Partial Dismissal. The ALJ granted the District’s Motion and scheduled a Show Cause Hearing for October 15, 2024, providing Parent the opportunity to appear and show cause why Parent’s July 31, 2024 due process complaint should not be dismissed due to Parent’s lack of standing to

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<sup>1</sup> OAR 581-015-2350 requires that a sufficiency challenge be filed within 15 days of receipt of the hearing request.

assert a claim on Student's behalf and/or Student's lack of residency in the District during August 2022.

On October 15, 2024, ALJ Webster convened the Show Cause Hearing as scheduled. Attorneys Melinda Thomas and Joel Hungerford represented the District. Parent appeared without counsel and testified on her own behalf. The hearing record closed on October 15, 2024.

### **SHOW CAUSE ISSUE<sup>2</sup>**

Whether Parent has standing to assert the claim that Student was denied a free and appropriate public education (FAPE) during an extended school year (ESY) program in August 2022.

### **EVIDENTIARY RULINGS**

Parent's Exhibits S1 through S4 were admitted into the record along with District rebuttal Exhibits D1 and D2. Also considered in ruling on the show cause issue were the Declaration of Student's Guardian, Exhibits 1A and 1B and 2 through 6 submitted with the District's Motion, Parent's Response to the District's Motion, and Parent's Complaint.

### **FINDINGS OF FACT**

1. Parent is Student's biological mother. Student's date of birth is January 3, 2004. (Decl. of Guardian; test. of Parent.)

2. Student is nonverbal and incapacitated and requires around-the-clock care, supervision, and management as a result of their medical conditions. (Test. of Parent; Decl. of Guardian.)

3. On or about November 4, 2020, in accordance with the requirements of OAR 581-015-2330(1), the District provided written notice to Parent that the rights accorded to Parent under the special education laws would transfer to Student when Student reached the age of majority (age 18). (Ex. D1 at 4.)

4. The District also provided Parent and Student with a copy of the Notice of Procedural Safeguards before Student reached the age of majority. The Notice of Procedural Safeguards includes information regarding the transfer of rights once Student reached the age of majority. (Ex. D2.)

5. Student turned age 18 on January 3, 2022. At that time, the rights accorded Parent under the special education laws transferred to Student and Student became an "adult student" as defined in OAR 581-015-2000(1).

6. In accordance with the requirements of OAR 581-015-2330(2), the District provided

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<sup>2</sup> Because the first issue is dispositive, there is no need to address the second issue: whether Student resided within the District during August 2022.

written notice to Parent and Student of the transfer of rights to Student. (Ex. D2 at 6.)

7. Once Student turned 18 and became an “adult student,” the District continued to invite Parent to participate in meetings with respect to Student’s education and the provision of FAPE. For the remainder of the 2021-2022 school year and throughout the month of August 2022, Parent acted as Student’s educational decision-maker despite the fact that the rights accorded to Parent had transferred to Student as of January 3, 2022. (Test. of Parent.)

8. On or about December 8, 2022, Parent filed for a temporary guardianship of Student, which the court granted for a period of 30 days. In early 2023, Student’s biological father objected to Parent’s guardianship of Student and filed his own petition to be appointed as Student’s guardian. Parent objected to father’s appointment as guardian and sought extension of her temporary guardianship appointment. (Test. of Parent.)

9. On April 11, 2023, the Deschutes County Circuit Court appointed a neutral third party as Student’s temporary guardian. (Ex. 1A.)

10. On July 26, 2024, Parent withdrew her petition for guardianship and her objection to Student’s father’s petition for guardianship of Student. On July 30, 2024, a Deschutes County Circuit Court Judge issued a Limited Judgment Authorizing Resignation of Current Temporary Guardian and Appointing Guardian for an Indefinite Period, appointing Student’s father as guardian. (Decl. of Guardian, Exs. 1A and 1B.)

### **CONCLUSION OF LAW**

Parent lacks standing to assert the claim that Student was denied FAPE during ESY in August 2022.

### **OPINION**

At issue in the Show Cause Hearing is whether Parent has legal standing to assert the alleged denial of FAPE referenced in Parent’s July 31, 2024 request for due process hearing. As set out in the September 30, 2024 Ruling on District’s Motion for Order to Show Cause and Alternative Motion of Partial Dismissal, Parent bears the burden to prove that she has such standing, *i.e.*, the legal right under the IDEA, ORS 343.165(1)(a)(A), and OAR 581-015-2345(1)(a)(A), to request a hearing on Student’s behalf after Student reached the age of majority. *Schaffer v. Weast*, 546 U.S. 49 (2005) (in due process proceedings alleging violations of the IDEA, the party seeking relief has the burden of proof).

For the reasons that follow, Parent has not sustained this burden. Parent has not established that she has the legal authority to request a due process hearing on Student’s behalf for an alleged denial of FAPE during August 2022.

The following definitions, set out in OAR 581-015-2000(1) and (22), are pertinent in this case:

(1) “Adult student” is a student for whom special education procedural safeguard rights have transferred as described in OAR 581-015-2325.

\* \* \* \* \*

(22) “Parent” means:

(a) One or more of the following persons:

(A) A biological or adoptive parent of the child;

\* \* \* \* \*

(C) A legal guardian, other than a state agency;

\* \* \* \* \*

(b) Except as provided in subsection (c), if more than one party is qualified under subsection (a) to act as a parent and the biological or adoptive parent is attempting to act as the parent, the biological or adoptive parent is presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(c) If a judicial decree or order identifies a specific person under subsection (a) to act as the parent of a child or to make educational decisions on behalf of a child, then that person will be the parent for special education purposes.

Also pertinent is OAR 581-015-2325, which provides for the transfer of procedural rights at age of majority. The rule states as follows:

(1) When a child with a disability reaches the age of majority under ORS 109.510<sup>3</sup> or 109.520<sup>4</sup> or is emancipated pursuant to 419B.550 to 419B.558, *the rights accorded to the child’s parents under the special education laws transfer to the child*. A student for whom rights have transferred is considered an “adult student” under OAR 581-015-2000.

(2) Notwithstanding section (1) of this rule: (a) Pursuant to a protective proceeding under ORS Chapter 125, the Probate Court may find the child to be incapacitated to make educational decisions and may appoint a guardian to exercise these rights.

Emphasis added.

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<sup>3</sup> ORS 109.510 identifies the age of majority, in Oregon, to be 18 years old.

<sup>4</sup> ORS 109.520 pertains to the age of majority for married persons and, as such, is inapplicable to this matter.

As set out in the findings above, Student reached the age of majority on January 3, 2022. At that time, Student became an “adult student” and the rights accorded Parent under the special education laws transferred to Student pursuant to OAR 581-015-2325(1). Although the District continued to invite Parent’s participation in Student’s educational decisions for the remainder of the 2021-2022 school year, Parent lost the legal right to make educational decisions on Student’s behalf as of Student’s 18<sup>th</sup> birthday.<sup>5</sup> In August of 2022, the time of the alleged violations of the IDEA, Parent did not have a judicial decree or order authorizing her to make educational decisions for Student. Parent had not been appointed as Student’s guardian. Therefore, during August 2022, Parent was not legally authorized to exercise Student’s rights under the special education law.

Parent was also not legally authorized to exercise Student’s rights under the special education laws at the time Parent filed the due process complaint on July 31, 2024. Although, in December 2022, Parent was briefly authorized to act as a temporary guardian, that guardianship expired. On April 11, 2023, a third party was appointed as Student’s temporary guardian. And, as of July 30, 2024, the court appointed Student’s biological father as Student’s guardian. Therefore, pursuant to the provisions of OAR 581-015-2325 and OAR 581-015-2000(22)(a) and (c), Student’s biological father became Student’s “parent” for special education purposes as of July 30, 2024. Consequently, at no time pertinent to this matter did Parent, Student’s biological mother, have the standing to request a due process hearing on Student’s behalf.

Because Parent lacked standing to request a due process hearing on Student’s behalf, Parent’s July 31, 2024 complaint must be dismissed.

### **ORDER**

Parent’s July 31, 2024 request for a due process hearing is dismissed with prejudice.

Alison G. Webster

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Senior Administrative Law Judge  
Office of Administrative Hearings

### **APPEAL PROCEDURE**

**NOTICE TO ALL PARTIES:** If you are dissatisfied with this Order you may, within 90 days after the mailing date on this Order, commence a nonjury civil action in any state court of competent jurisdiction, ORS 343.175, or in the United States District Court, 20 U.S.C. §

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<sup>5</sup> See, e.g., *Doe v. Westport Bd. of Educ.*, 609 F. Supp. 3d 75 (D. Conn. 2020) (dismissing parents IDEA claims because parents no longer had the statutory right to seek reimbursement under the IDEA after their daughter turned 18); *Loch v. Edwardsville Sch. Dist. No. 7*, 327 F. App’x 647, 650 (7th Cir. 2009) (same); *Ravenna Sch. Dist. Bd. of Educ. v. Williams*, No. 5:11CV1596, 2012 WL 3263258, at \*3 (N.D. Ohio Aug. 9, 2012) (finding that parents do not retain their rights under the IDEA when their child turns 18).

1415(i)(2). Failure to request review within the time allowed will result in **LOSS OF YOUR RIGHT TO APPEAL FROM THIS ORDER.**

### **SERVICEMEMBERS' CIVIL RELIEF ACT**

Unless otherwise stated in this order, the Office of Administrative Hearings (OAH) has no reason to believe that a party to this proceeding is subject to the Servicemembers' Civil Relief Act (SCRA). If a party to this proceeding is a servicemember who did not appear for the hearing, within the servicemember's period of service, or 90 days after their termination of service, that party should immediately contact the agency to address any rights they may have under the SCRA.

**CERTIFICATE OF MAILING**

On October 17, 2024, I mailed the foregoing RULING ON SHOW CAUSE HEARING AND FINAL ORDER OF DISMISSAL in OAH Case No. 2024-ABC-06648 to the following parties.

By: Electronic and Certified Mail

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