

STATE OF VERMONT
AGENCY OF EDUCATION

Special Education Due Process Case # DP-24-08

ORDER RE: SUPERVISORY UNION'S MOTION TO DISMISS

Pursuant to the Preliminary Scheduling Order, the School District filed its Motion to Dismiss on November 30, 2023. Parent did not file a response to the motion.

1. UNDISPUTED FACTS

On November 16, 2023, Parent filed a Due Process Complaint on behalf of Student with the Vermont Agency of Education. The Complaint alleged that the School District had failed to provide Student with a Free Appropriate Public Education (FAPE) because the School District stopped providing special education and related services to Student without first notifying Parent.

Student turned 18 years old on September 2, 2023, at which time rights otherwise afforded to Parent under the Individual with Disabilities Education Act (IDEA) were transferred to Student. VSER 2365.1.12(a)(2). In anticipation of this event, on August 11, 2023, the School District informed Parent and Student via a letter that when Student turned 18, rights under IDEA would transfer from Parent to Student. *See* VSER 2365.1.12(a)(1).

After receiving this letter, Student executed a document entitled “Power of Attorney for Education Decision Making” on August 25, 2023. The document executed by Student appears to

be a form developed and made available to the public by the Vermont Family Network (VFN). See Vermont Family Network¹, “Supported Decision-Making Packet For Students, Families and Educators.”

In another document entitled “Guardianship and Alternatives for Adults with Disabilities,” the VFN advises parents that “[t]here are alternatives to guardianship that can provide additional support to adults with disabilities without affecting their right to make their own decisions.” Among these alternatives, according to the VFN, are Powers of Attorney that are “convenient” and allow a trusted “agent” to conduct business on behalf of the principal, “in this case the adult with a disability.” “Guardianship and Alternatives for Adults with Disabilities,” pp. 1-2.

A separate section of this publication includes this question: “**My son turned 18 and is on an IEP. The school staff told me I could no longer attend IEP meetings unless I am my son’s guardian?**” After providing some preliminary advice, the publication indicates that “[a] power of attorney for education purposes can also be helpful as it would authorize you or another trusted adult to step in to assist your son if needed.” *Id.* at 4.

A document entitled “Information for STUDENTS and FAMILIES About Alternatives to Guardianship for Education Decisions,” and posted on the official Vermont state website “dail.vermont.gov,” provides similar advice. The documents advises its readers:

Before asking for a guardian, it important to consider other options ... **Here are ways a student can get help from others without having a guardian: ... Education Power of Attorney:** A student uses this document to give someone the power to make school decisions for them. It also describes how the student will help make

¹ According to its website, the mission of the Vermont Family Network is to empower and support all Vermont children, youth, and families, especially those with disabilities and special health needs.

those decisions. Here are a few things you need to know about an education power of attorney:

- You do not have to go to court to establish a power of attorney
- The power of attorney needs to be signed by a Notary Public
- The student decides who they want to make the decision for them
- The student can cancel the agreement at any time

Legal Issues

The School District's motion raises the following legal issues:

- i. Whether a student who is 18 years old or older may assign their rights under the IDEA to another person with a power of attorney?
- ii. Whether Parent's Due Process Complaint fails to state a claim?

2. DUE PROCESS COMPLAINTS ARE SUBJECT TO SUMMARY DISPOSITION

The Second Circuit has held that due process complaints are subject to summary disposition. *See J.D. ex rel. J.D. v. Pawlet School District*, 224 F.3d 60, 68-69 (2d Cir. 2000). As the Court observed: "the purpose of an adversarial hearing is to resolve disputed issues of fact. Issues of law reside where they always have - with the adjudicator, whether an administrative or judicial officer."

3. STANDARD OF REVIEW

A motion to dismiss should be granted when the record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c); *City of Burlington v. Hartford Steam Boiler Inspection and Ins. Co*, 190 F. Supp. 2d 663 (D.Vt. 2002). To decide such a motion, the adjudicator must resolve all ambiguities and draw all reasonable inferences in favor of the non-moving party, and decide whether a fact-finder could decide in favor of that party under applicable law. *Scott v. Harris*, 550 U.S. 373, 378 (2007).

4. CONCLUSIONS OF LAW

i. Under Vermont law, a power of attorney may not be used to assign a student's rights under the IDEA after the student has turned 18 years of age

This case presents an issue that has yet to be addressed by Vermont's state and federal courts, i.e., whether a student who is 18 years of age or older and who is eligible for special education and related services under the IDEA can appoint a person to file a due process complaint and represent their interests in those proceedings by executing a power of attorney pursuant to the authority granted by Vermont's version of the Uniform Power of Attorney Act, 14 V.S.A. §4001 et seq., which took effect on July 1, 2023.

The Vermont Uniform Power of Attorney Act authorizes persons to delegate broad authority to an agent to make decisions on behalf of the principal on a wide range of important issues. *See* 14 V.S.A. 4031, et seq. An agent duly appointed pursuant to Section 4005 may execute contracts, pursue legal claims, initiate litigation, and participate in alternative dispute resolution on behalf of the principal. *See* 14 V.S.A. §4042 (a power of attorney may authorize an agent to “assert and maintain before a court or administrative agency a claim, claim for relief, counterclaim, offset, recoupment, or defense ...”).

Section 4042 appears, at least at first glance, to authorize a student who has turned 18 to appoint an agent to pursue a due process claim on their behalf. However, a student's right to receive special education and related benefits is a creation of federal law. After the IDEA was signed into law, federal officials developed administrative rules to implement the law and to protect the rights of students who qualified for benefits under the law. Once the regulations were promulgated, they had the same force of law as the enabling statute.

The IDEA requires state educational agencies to “establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies.” 20 U.S.C. §1415(a). To meet this federal requirement, Vermont’s Agency of Education has promulgated the Vermont Special Education Rules (VSER). The latest version of these Rules was approved by the Agency in July 2022.

Section 1415(m)(1) mandates that parental rights under IDEA automatically transfer to IDEA-eligible students when they reach the age of majority in their home state. There is an exception to this statutory mandate, which is set forth in Subsection (m)(2):

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this subchapter.

Some states have established such procedures; for whatever reason, Vermont has not. For example, the Illinois legislature has adopted a specific procedure for IDEA-eligible students to delegate their rights to a person of their choice. *See* 105 ILCS 5/14-6.10(c). The statute includes the procedure by which a delegation may be made, the term of the delegation (one year, with the option of annual renewal), and a provision preserving the student’s right to terminate the delegation at any time. A separate subsection requires the use of a specific form and includes a template of that form.

As noted above, Vermont has not yet complied with Section 1415(m)(2) and passed into law a procedure by which an IDEA-eligible student may delegate their rights under the IDEA to

a parent or other adult. For that reason, Parent lacked the legal authority to file the due process complaint on behalf of Student and the School District's motion to dismiss must be granted.

ii. The District's alleged failure to provide Student with a FAPE

In its motion to dismiss, the School District argues that Parent's due process complaint does not allege sufficient facts to prove that the District failed to provide Student with a FAPE. Because Parent had no standing to file the due process complaint, the hearing officer is without jurisdiction to resolve this issue.

CONCLUSION

For the reasons stated above, the School District's motion to is granted and the complaint is dismissed without prejudice.

NOTICE OF APPEAL RIGHT

Pursuant to Vermont Department of Education Rule 2365.1.8:

"(a) The decision of the hearing officer is final unless appealed to a state or federal court of competent jurisdiction.

(b) Parties have the right to appeal the hearing decision by filing a civil action in a federal district court or a state court of competent jurisdiction in accordance with Rule 2365.1.9."

Dated at Burlington, Vermont this 15th day of December 2023.

David J. Williams

Due Process Hearing Officer

Vermont Agency of Education