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JUN 17 2013

IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

Kevin Westray, Legal Assistant

D.P., by and through his parent, K.S.
Plaintiff,

:
: Docket No.:
: OSAH-DOE-SE- Walker

v.

COUNTY SCHOOL DISTRICT,
Defendant.

ORDER OF DISMISSAL

I. Background

On May 24, 2013, (hereinafter "the parent") filed a request for a due process hearing on behalf of her son, D.P, alleging multiple violations of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* A due process hearing was scheduled for July 3, 2013 at the Office of State Administrative Hearings.

On June 5, 2013, Defendant County School District, filed a Motion to Dismiss the due process hearing. D.P. was born on October 24, 1994 and is eighteen years old.¹ In the Motion to Dismiss, Defendant asserts that D.P.'s parent may not represent D.P. because he has attained the age of majority. In response to Defendant's motion, the parent maintains that she may legally represent D.P. in the present administrative hearing. Notwithstanding D.P.'s age, she relies on the fact that D.P. has assigned her a Power of Attorney for Educational Decision Making.

After reviewing the pleadings filed by the parties, and for the reasons stated below, this Court GRANTS Defendant's Motion to Dismiss.²

¹ The age of majority is eighteen in Georgia. O.C.G.A. § 39-1-1 (2012).

² On June 10, 2013, Defendant also filed a Motion for Summary Determination, alleging that the IDEA claims

II. Conclusions of Law

a. Parents' rights under IDEA

When a minor is eligible for services under the IDEA, his or her parents have their own "independent, enforceable rights" under the Act. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 531 (2007) (parents have "an independent stake not only in the procedures and costs implicated by this process but also in the substantive decisions to be made," and thus are entitled to all of the same rights and remedies as their children). Because parents have independent rights, they may "prosecute IDEA claims on their own behalf." *Id.* at 535; see *Oliver v. Southcoast Med. Group, LLC*, No. CV411-115, 2011 U.S. Dist. LEXIS 70016, at *6 (S.D. Ga. June 13, 2011) ("parents may not represent *pro se* any interests that exclusively belong to their child under the [IDEA], but . . . parents may represent themselves *pro se* to vindicate any rights that have been granted to them under the IDEA"). In effect, parents are able to enforce their own independent rights through a *pro se* proceeding and accomplish the same end goal as if had they brought suit in the name of their child. Cynthia Godsoe, *All in the Family: Towards a New Representational Model for Parents and Children*, 24 Geo. J. Legal Ethics 303, 316 (2011).

Once a child reaches the age of majority, the parents' rights under the IDEA transfer to the child, unless a child has been declared incompetent under state law.³ 20 U.S.C. § 1415(m)(1); 34 C.F.R. 300.520(a); Ga. Comp. R. & Regs. r. 160-4-7-.06(3) (rights transfer to child at age eighteen). In addition, if the child "has not been determined to be incompetent, but . . . is determined not to have the ability to provide informed consent with respect to [his or her] educational program," the parent must be appointed to represent the child's "educational

asserted have been mooted by D.P.'s graduation from _____ County High School with a regular education diploma on May 31, 2013. However, as this Court is dismissing the present action, the Court will not consider the merits of the Motion for Summary Determination.

³ In Georgia a probate court may declare a person incompetent. O.C.G.A. § 15-9-30(5) (probate courts have exclusive jurisdiction over competency).

interests" through age twenty-one. 20 U.S.C. §§ 1415(m)(2), 1412(a)(1)(A).

b. Parental representation.

Although D.B.'s parent seeks to represent his educational interests in this proceeding, parental representation is not warranted. D.P. has reached the age of majority. He has not been declared incompetent, nor has it been determined that he does not have the ability to provide informed consent. Further, even if it were appropriate for the parent to continue to represent D.B., she would still need to be represented by counsel in these proceedings. "Parents who are not attorneys may not bring a pro se action on their child's behalf ... because it helps to ensure that children rightfully entitled to legal relief are not deprived of their day in court by unskilled, if caring, parents." *Devine v. Indian River County School Bd.*, 121 F.3d 576, 582 (11th Cir. 1997), *overruled on other grounds by Winkelman*, 550 U.S. at 531; *Mosely v. Bd. of Educ. of Chicago*, 434 F.3d 527, 532, 535 (7th Cir. 2006) (recognizing that parents are entitled to sue pro se when their procedural rights under IDEA are infringed, but they may not represent their children's claims pro se). In general, a layperson may not appear as an attorney "for any person other than himself in any court of this state or before any judicial body." O.C.G.A. § 15-19-51(a)(1) (emphasis added). The practice of law includes "[t]he giving of any legal advice," "[a]ny action taken for others in any matter connected with the law," and "representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body." O.C.G.A. § 15-19-50(1), (5), (6).

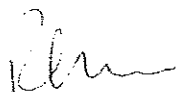
c. Power of attorney is not an authorization to practice law

It is uncontested that D.P. is an adult, and that he has given his parent the right through the grant of a power of attorney to represent his educational interests as long as he remains eligible for special education services under the IDEA. However, "the authorization to act under

a power of attorney is not an authorization to practice law.” *Sanders v. Funk*, No. 07-cv-00192-LTB-CBS, 2007 U.S. Dist. LEXIS 28374, at *8 (D. Colo. Apr. 6, 2007). Thus, the fact that a parent has obtained powers of attorney over his or her child’s educational interests “may not be used to circumvent state law prohibitions on the unauthorized practice of law.” *Sanders*, 2007 U.S. Dist. LEXIS 28374, at *8 (citations omitted); *In re UPL Advisory Opinion*, 2003-1, 280 Ga. 121, 122-123 (2005) (grant of powers of attorney does not permit unauthorized practice of law).

D.P. has reached the age of majority. D.P. may represent himself, or he may hire an attorney to represent him in this matter. For the aforementioned reasons, this Court hereby **DISMISSES** the case **WITHOUT PREJUDICE**, giving D.P. an opportunity to re-file this case either representing himself or with the benefit of legal counsel.

SO ORDERED this 7th day of June, 2013.



RONIT WALKER,
Administrative Law Judge