

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

████ BY AND THROUGH █████ AND
████

Petitioners,

v.

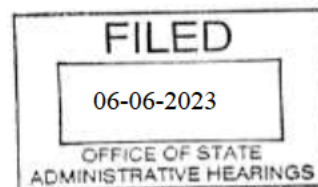
**GWINNETT COUNTY SCHOOL
DISTRICT,**

Respondent.

Docket No.: █████

████-OSAH-DOE-CPEXP-67-Boggs

Agency Reference No.: █████



AMENDED¹
FINAL DECISION
ORDER OF DISMISSAL

I. INTRODUCTION

An expedited hearing in this matter—regarding a manifestation determination—was scheduled for June 13, 2023. On June 1, 2023, the Respondent moved for dismissal, on the grounds that Petitioner █████—mother of student-Petitioner █████—lacked standing to bring any claims under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 et seq. That same day, June 1, the Court ordered the parties to appear for a prehearing telephone conference at 10:00 AM on June 5, 2023, to address the Respondent’s dismissal motion. In addition, the Court also allowed the Petitioners to submit a written response (via email) to the dismissal motion, due by 9:00 AM on June 5, 2023.

The Petitioners did not submit any written response to the dismissal motion by the stated deadline. Also, the Petitioners failed to appear for the 10:00 AM prehearing telephone conference

¹ This Amended Final Decision/Order of Dismissal is identical to the version issued June 5, 2023, with the exception that it removes the references on pages 2 and 4 to powers of attorney (“POA”). While students often execute Educational POA documents, a POA would **not** authorize someone else to appear before this Court and represent that student’s interests in an IDEA proceeding. Under procedural rules, a party in a hearing before this Court either may represent himself or be represented by an attorney licensed with the state of Georgia. See Ga. Comp. R. & Regs. 616-1-2-.34(1). See also In re Estate of Wheeler, 349 Ga. App. 716, 717 (2019) (holding that “a power of attorney does not confer upon a layman the right to practice law.”)

on June 5, 2023.² The Petitioners were hereby found in default, and the conference proceeded in their absence. See Ga. Comp. R. & Regs. 616-1-2-.30(1)(b), (3).

Having reviewed the Respondent’s uncontested motion, and for the reasons stated below, the Petitioners’ Due Process Complaint is hereby **DISMISSED**.

II. ANALYSIS

The IDEA specifies that a state may provide for parental rights to transfer to a student at the age of majority. 20 U.S.C. § 1415(m)(1); 34 C.F.R. § 300.520(a). Georgia does not have a statute or regulation that speaks directly to the mandatory transfer of such rights. However, several regulations heavily imply that the transfer is required:

- **Ga. Comp. R. & Regs. 160-4-7-.06(3)**: This regulation states that, beginning at least a year before a student reaches age 18, the Individualized Education Program (“IEP”) “must include a statement that the student has been informed of the student’s rights under Part B of the IDEA, if any, *which will transfer to the student on reaching age 18.*” (Emphasis added.) The use of the mandatory “must” and “will” suggests that a transfer of rights from parent to child is expected.
- **Ga. Comp. R. & Regs. 160-4-7-.09(5)(a)**: With regard to a school providing notice of proposed changes to a child’s identification, evaluation, or educational placement or the provision of a free appropriate public education, this regulation states as follows: “*After rights have been transferred to a child who has reached the age of majority*, any written notice covered under this Rule shall be provided to both the child and to the parent(s) of the child.” (Emphasis added.) Again, the choice of language—here, the conjunction “after”—implies that the rights of a parent do transfer to a disabled child who reaches majority age.
- **Ga. Comp. R. & Regs. 160-4-7-.21(2)-(3)**: These provisions define “Adult student” as “[a] student with a disability, *age 18 or older*, to whom rights have transferred under the IDEA 2004 and Georgia Rule.” (Emphasis added.) Here, the direct reference to the “IDEA 2004”—which allows but does not require states to provide for the transfer of rights—suggests that the intent is for Georgia’s regulations to provide for such transfer. The provisions also define “age of majority” as 18.

² By June 2, 2023, Court staff had confirmed with both the Respondent’s counsel and Petitioner [REDACTED] that they had received the order for the June 5 prehearing telephone conference. On the day of the conference, Court staff also attempted to contact Petitioner [REDACTED] by phone and email between 10:00 and 10:15 AM, to see whether she intended to participate in the conference. Court staff were unable to get in touch with her; accordingly, the prehearing conference proceeded in the Petitioners’ absence as of 10:15 AM.

Federal IDEA law allows for certain exceptions to this transfer of rights. Namely, parents' rights may transfer to the student upon a child reaching the age of majority, "except for a child with a disability who has been determined to be incompetent under State law." 20 U.S.C. § 1415(m)(1); see also 34 C.F.R. § 300.520(a). Another exception allows for a parent or another individual to represent the student's educational interests "if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program." 34 C.F.R. § 300.520(b); see also 20 U.S.C. § 1415(m)(2).

Here, the Respondent asserts that student-Petitioner █████ reached the age of majority—i.e., age 18—on November 20, 2022. This age corresponds to his birthdate of November 20, 2004, as listed on the Due Process Complaint filed by Petitioner █████³ Hence, █████ was 18 years old on or around May 23, 2023, when his mother signed and filed the instant Due Process Complaint.⁴ The Respondent further asserts that, to the best of its knowledge and belief, (i) there has been no determination that █████ has been deemed legally incompetent or otherwise is unable to provide informed consent; and (ii) █████ has not executed any legal instrument which would grant █████ authority to make educational decisions on █████ behalf.

Based on these uncontroverted facts, the Court concludes that any rights under the IDEA possessed by parent █████ transferred to her son as a matter of law upon his 18th birthday in November 2022. Hence, █████ had no enforceable rights under the IDEA at the time she filed the instant Due Process Complaint in May 2023, and thus has no standing to proceed as a party in this matter. See 20 U.S.C. § 1415(m)(1); 34 C.F.R. § 300.520(a); Ga. Comp. R. & Regs. 160-4-7-

³ (See Case File, OSAH Form 1 and attachments, filed May 23, 2023.)

⁴ (See id.)

.21(2)-(3); see also Presely v. Friendship Pub. Charter Sch., No. 12-0131 BAH/DAR, 2013 U.S. Dist. LEXIS 31974, at *15-17 (D.D.C. Feb. 7, 2013).

The Court next turns to whether ■■■ can and should continue as the sole petitioner in this matter, or whether the instant Due Process Complaint should be dismissed in its entirety. As the Respondent noted during the prehearing telephone conference on June 5, 2023, the Due Process Complaint was signed by ■■■ only. Thus, the Court agrees with the Respondent that ■■■ has no recognizable legal authority to assert IDEA claims on her son's behalf. See Castillo v. Sch. Bd. of Broward Cnty., No. -CIV-DIMITROULEAS, 2015 U.S. Dist. LEXIS 186579, at *4 (S.D. Fla. Aug. 19, 2015) (in context of a § 1983 action, noting that U.S. Code Section 1415(m) barred plaintiff from bringing an IDEA-related action on behalf of her son, as the son was not a minor at the time the complaint was filed); cf. Draper v. Atlanta Indep. Sch. Dist., No. 1:06-CV-487-MHS, 2006 U.S. Dist. LEXIS 40964, at *12, fn. 4 (N.D. Ga. Jun. 20, 2006) (noting that the student, not the parents, had to agree to a placement decision, as the student "had reached the age of majority and . . . parental rights under IDEA had transferred to him").⁵

For the above reasons, the Due Process Complaint has not been properly brought before this Court and therefore should be dismissed in its entirety. However, this dismissal shall be *without prejudice*, to the extent that ■■■ as the sole party with enforceable IDEA rights, remains free to re-start the process by filing a new Due Process Complaint covering the same grounds as the complaint now being dismissed.⁶

⁵ The Petitioners' failure to appear at the prehearing conference also prevented this Court from inquiring whether ■■■ would wish to proceed with this matter as the sole named petitioner.

⁶ See Stalley v. Orlando Reg'l Healthcare Sys., 524 F.3d 1229, 1232 (11th Cir. 2008) (stating that dismissal for lack of standing is not a judgment on the merits and is entered without prejudice).

III. CONCLUSION

Based on the foregoing, the Respondent's motion is **GRANTED**, and the Due Process Complaint filed by Petitioner [REDACTED] on or around May 23, 2023, is hereby **DISMISSED** in its entirety. This dismissal is **WITHOUT PREJUDICE**, to the extent that Petitioner [REDACTED] remains free to exercise his rights under the IDEA by filing a new Due Process Complaint addressing the same grounds as the dismissed complaint. As this case is dismissed, the hearing scheduled for June 13, 2023, is **CANCELED**. This Order shall constitute the Final Decision in this matter.

SO ORDERED, this 6th day of June, 2023.

Lisa Boggs

Lisa Boggs
Administrative Law Judge

