

**BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
for the  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION**

**IN THE MATTER OF THE EDUCATION OF )  
STUDENT AND PORTLAND PUBLIC ) RULING ON SUMMARY  
SCHOOL DISTRICT ) DETERMINATION AND  
 ) FINAL ORDER  
 )  
 ) Case No. DP 11-132**

**HISTORY OF THE CASE**

On December 19, 2011, the Parent filed a request for a due process hearing with the State Superintendent of Public Instruction, alleging that the District has failed to provide the Student with a free appropriate public education (FAPE).

The State Superintendent of Public Instruction referred the case to the Office of Administrative Hearings on December 20, 2011. The case was assigned to Senior Administrative Law Judge Ken L. Betterton.

A telephone pre-hearing conference was held on January 19, 2012. Attorney Suzy Harris represented the Portland Public School District (District). Neither the Parent nor any representative for the Parent appeared at the pre-hearing conference.

Another telephone pre-hearing conference was scheduled for February 16, 2012. Attorney Harris represented the District. The Parent appeared and represented the Student. Tim Jon Runner, a parent representative, also appeared at the pre-hearing conference pursuant to OAR 581-015-2360(5)(b)(A). At the pre-hearing conference, the District stated its intention to file a motion for summary determination. A schedule was established for the filing of a motion for summary determination, a response to the motion, and a reply to the response. Another telephone pre-hearing conference was scheduled for May 3, 2012.

On February 22, 2012, the District filed a Motion for Summary Determination. On March 20, 2012, the Parent filed a Response to the Motion. On March 28, 2012, the District filed a Reply to the Response.

**ISSUES**

The grounds for the District's Motion in its Summary Determination are as follows:

- (1) Parents do not currently have legal authority to pursue this hearing because a guardian was appointed for Student on December 28, 2011; the guardian has full rights to educational-decision making and to pursuing legal actions for the

Student. The guardian has not appeared in this matter. The hearing request should be dismissed on this basis.

(2) Oregon's two year statute of limitations bars reimbursement for claims earlier than December 19, 2009.

(3) PPS [District] was not responsible for "child find" when Student attended private schools located outside the district. Student attended Jesuit High School for the 2009-2010 and 2010-2011 school years and attended Brigham Young University Online Academy for fall 2011, which covers the bulk of the time period covered by the hearing request.

(4) PPS did not have reason to suspect a disability that adversely impacted education when Student enrolled at Lincoln High School in June 2011. (Student did not actually attend Lincoln High School after enrolling there.)

(5) PPS satisfied its "child find" responsibilities upon learning of Student's participation in the Catherine Freer Therapeutic Wilderness Program.

(6) PPS was not required to provide Notice of Procedural Safeguards to Parents.

(7) The issues of "failure to assess" and "failure to develop an IEP" are not ripe as Parents did not respond to the district's letter offering to hold an evaluation planning meeting to address these issues and instead requested this hearing.

#### **DOCUMENTS CONSIDERED FOR THE RULING**

Exhibits 1 through 10, submitted by the District, were considered in this ruling and final order. The affidavits of one of Student's Parents, the affidavit of David W. Willis, and the affidavit of Kathy J. Marshack, were also considered in this ruling and final order.

#### **FINDINGS OF FACT RELEVANT TO THE RULING**

(1) On December 19, 2011, a biological Parent filed a request for due process hearing with the Superintendent of Public Instruction, alleging that the District has failed to provide the Student with FAPE. (Request for Due Process Hearing.)

(2) On December 27, 2011, Ruth Vaccaro was appointed as the Student's guardian by order of the Multnomah County Circuit Court. (Ex. 1.) The guardianship order states that the guardian is responsible for the Student's education, social and other needs, and is authorized to pursue any legal claims on behalf of the Student. The guardianship papers grant physical custody and legal custody of the Student to the guardian. (*Id.* at 3-4.)

## SUMMARY DETERMINATION

OAR 137-003-0580 governs motions for summary determination. That administrative rule provides, in relevant part:

(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order \* \* \* incorporating that ruling \* \* \*.

## CONCLUSION OF LAW

The District is entitled as a matter of law to judgment in its favor on the first ground set forth in its motion for summary determination. The Parent's request for due process hearing is dismissed.

## OPINION

The District argues that only the legal guardian, not the Parent, has the current authority to represent the Student in this due process complaint and the hearing process. The District argues that the Parent's request for due process hearing must be dismissed.

The Parent argues that because he/she was the parent when the request for due process hearing was filed on December 19, 2011, he/she has the authority to proceed with this due process complaint and the hearing process.

Under ORS 125.315(1)(e), when a guardian is appointed to act for a minor child, the guardian steps into the place of the parent and "has the powers and responsibilities of a parent who has legal custody of the child." The guardianship order grants physical and legal custody of the Student to the guardian, and assigns the responsibility for educational decision making and the right to pursue legal claims to the guardian.

Only a parent (or adult student) has standing to file a due process hearing request. ORS 343.165; OAR 581-015-2345. "Parent" is defined in OAR 581-015-2000(21) as:

(a) One or more of the following persons:

- (A) A biological or adoptive parent of the child;
- (B) A foster parent of the child;
- (C) A legal guardian, other than a state agency;

\* \* \* \* \*

(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.*

(Emphasis added.)

Although the Parent was the parent for purposes of OAR 581-015-2000(21) on December 19, 2011, when he/she filed the request for due process hearing, his/her status changed starting December 27, 2011, when the legal guardian was appointed for the Student. Since December 27, 2011, the legal guardian has been "the parent for special education purposes." OAR 581-015-2000(21)(c). Only the guardian has the legal authority after that date to represent the Student on

all matters concerning the request for due process hearing. Because the legal guardian is the “parent” for purposes of party status as of December 27, 2011, the Parent is not the proper party to go forward with the hearing process. Therefore, the request for due process hearing must be dismissed.

Because of the ruling on the District’s first ground in its Motion for Summary Determination, the remaining grounds are moot and will not be addressed in this ruling and final order.

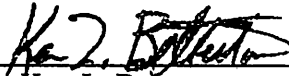
**RULING ON SUMMARY DETERMINATION**

The District’s Motion for Summary Determination is granted on the first ground set forth in the motion. The Parent’s request for due process hearing is dismissed.

The pre-hearing conference scheduled for May 3, 2012 is cancelled.

**ORDER**

The Parent’s request for due process hearing filed December 19, 2011 is **DISMISSED**.



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Ken L. Betterton

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

**ENTERED** at Salem, Oregon this 20th day of April, 2012 with copies mailed to:

Jan Burgoyne, Oregon Department of Education, Public Services Building, 255 Capitol Street NE, Salem, OR 97310-0203.

## CERTIFICATE OF SERVICE

On this 20th day of April, 2012, I served a copy of the Ruling On Summary Determination And Final Order for Case No. DP 11-132 on the following:

FIRST CLASS MAIL:

Parent(s) of Student  
2879 SW Champlain Drive  
Portland, OR 97205

Jillian Bonnington, Advocate  
Tim Jon Runner, Advocate  
Possibilities Educational Services  
26891 Recodo Lane  
Mission Viejo, CA 92691

Suzy Harris, AAL  
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501 N. Dixon Street  
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Portland Public School District  
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BY SHUTTLE MAIL:

✓ Claudette Rushing, Legal Specialist  
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Joanne Call, Hearings Coordinator  
Office of Administrative Hearings