

**BEFORE THE TENNESSEE DEPARTMENT OF EDUCATION
DIVISION OF SPECIAL EDUCATION**

IN THE MATTER OF:

G.M., *the Student*, and
P.M., the *Student's Parent/Guardian*,
Petitioners,

v.

JOHNSON CITY SCHOOLS,
Respondent.

DOCKET NO: 07.03-142959J

FINAL ORDER

This matter is before Joyce Carter-Ball, Administrative Law Judge, assigned by the Secretary of State. On June 19, 2017, Respondent filed a Motion to Dismiss Petitioner's Complaint. On June 21, 2017, Petitioners filed a Response to the Motion. In addition to the Motion to Dismiss is the Petitioners' request for attorney's fees.

In its Motion to Dismiss, Respondent alleges that G.M.'s grandfather is not a proper legal representative in this case, pursuant to 34 C.F.R. §300.520. Further, 20 U.S.C. §1415(m)(2) does not permit G.M. to appoint a representative or assign his educational rights to another individual.

FINDINGS OF FACT

1. The complaint in this case was filed by G.M.'s mother and grandfather on February 28, 2017, when G.M. was still a minor. Any parental rights to file an action transferred to the child, G.M., upon the age of majority. G.M. reached the age of eighteen (18) on March 6, 2017. Parental rights transferred to G.M. upon his reaching the age of majority, thus G.M. is the proper complainant in this matter.

2. Unless the child has been adjudicated incompetent, all rights vest in the child when the child attains eighteen (18) years of age. G.M. has not been adjudicated incompetent.

CONCLUSIONS OF LAW

1. Tenn. Comp. R. & Regs. 0520-01-09-.21

0520-01-09-.21 TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY.

The procedure for determining whether a child with a disability who has attained eighteen (18) years of age is competent to make educational decisions is provided at Tenn. Code Ann. §34-1-101 et seq. and §34-3-101 et seq. Unless the child has been adjudicated incompetent, all rights vest in the child when the child attains eighteen (18) years of age.

2. 34 C.F.R. § 300.520

§ 300.520 Transfer of parental rights at age of majority.

Currentness

(a) General. A State **may** provide that, when a child with a disability reaches the age of majority under State law that applies to all children (**except for a child with a disability who has been determined to be incompetent under State law**)—

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and

(ii) All rights accorded to parents under Part B of the Act **transfer to the child**;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.

(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act 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.

3. 20 U.S.C.A. § 1415 (West)

(m) Transfer of parental rights at age of majority

(2) Special rule

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be 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

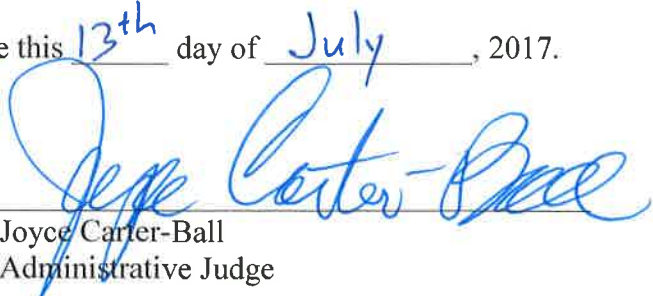
educational interests of the child throughout the period of eligibility of the child under this subchapter.

4. All rights, including educational decision-making, transferred to G.M. on March 6, 2017, pursuant to Tennessee State Board of Education R. and Regs. 0520-01-09-21.
5. The prevailing party in any action or proceeding brought under §615 of the IDEA is entitled to reasonable attorney's fees at the court's discretion. Petitioners are requesting this Court grant attorney's fees and legal costs incurred during totally separate administrative hearings and complaints.
6. This court lacks any authority to award attorney's fees or legal costs allegedly incurred with proceedings before the Office of Civil Rights or a juvenile court in the State of Tennessee.

Based on the foregoing facts and law, Petitioners fail to state a claim upon which the Court can grant the requested relief. It is determined that Respondent's Motion to Dismiss has merit and is **GRANTED**. All pleadings, correspondence, briefs and other materials filed by Petitioners are stricken. All pending motions are rendered moot. Further, Petitioners' request for attorney's fees or costs related to this action or any other is dismissed.

IT IS SO ORDERED.

This Final Order entered and effective this 13th day of July, 2017.



Joyce Carter-Ball
Administrative Judge

13th Filed in the Administrative Procedures Division, Office of the Secretary of State, this the
day of July 2017.

J. Richard Collier

**J. RICHARD COLLIER, DIRECTOR
ADMINISTRATIVE PROCEDURES DIVISION
OFFICE OF THE SECRETARY OF STATE**

Notice

Any party aggrieved by this decision may appeal to the Chancery Court for Davidson County, Tennessee or the Chancery Court in the county in which the petitioner resides or may seek review in the United States District Court for the district in which the school system is located. Such appeal or review must be sought within sixty (60) days of the date of the entry of a Final Order. In appropriate cases, the reviewing court may order that this Final Order be stayed pending further hearing in the cause.

If a determination of a hearing officer is not fully complied with or implemented, the aggrieved party may enforce it by a proceeding in the Chancery or Circuit Court, under provisions of Section 49-10-601 of the Tennessee Code Annotated.