

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2008080215

AMENDED ORDER DENYING
MOTION TO DISMISS

On August 5, 2008, attorney Heather McGunigle filed with the Office of Administrative Hearings (OAH) a due process hearing request on behalf of Student naming Riverside Unified School District (District) as the respondent. Student's Amended Complaint was filed on September 9, 2008 (Complaint.)

On March 10, 2009, attorney Arionna S. Whitaker filed, on behalf of District, a Motion to Dismiss Student's Complaint on the basis that District was not the responsible local educational agency for a portion of the time period at issue in the Complaint. On March 12, 2009, Student filed an opposition to District's Motion to Dismiss. Oral argument was heard on March 16, 2009 at the prehearing conference.

APPLICABLE LAW

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029)

Under the IDEA, the local educational agency (LEA) is charged with providing students residing within its jurisdiction with special education services. (20 U.S.C. § 1414 subd. (d).) Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

DISCUSSION

District contends that for portions of the period of time at issue in Student's Complaint, it was not the LEA responsible for Student's education. District argues that by its Charter, the charter school that Student attended was the responsible LEA. In support of its argument, District cites an excerpt from what it asserts is the charter for the charter school. The District fails to point any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication on this issue without giving the petitioner the opportunity to develop a factual record regarding the exceptions. Accordingly, the District's arguments are rejected at this time, although they may be raised as a defense at hearing.

ORDER

GOOD CAUSE APPEARING, District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

It is so ordered.

Dated: March 19, 2009

/s/

GLYNDA GOMEZ
Administrative Law Judge
Office of Administrative Hearings