

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, LOS ANGELES
DEPARTMENT OF MENTAL HEALTH,
CALIFORNIA DEPARTMENT OF
EDUCATION AND LONG BEACH
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009100740

ORDER GRANTING LONG BEACH
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On October 7, 2009, Student filed a Due Process Hearing Request (complaint) against Los Angeles Unified School District (LAUSD), Los Angeles County Office of Education (LACOE), Los Angeles Department of Mental Health (LADMH), California Department of Education (CDE). On Student moved to amend the complaint to add Long Beach Unified School District (LBUSD) as an additional party because his biological parent, his mother, lives within the jurisdiction of LBUSD. According to Student, on September 18, 2009, the Los Angeles Superior Court redesignated the same individual it appointed as Student's responsible adult (RA) as his surrogate parent, and that this change in designation potentially triggered LBUSD's duties to provide Student a FAPE based upon his mother's residence. OAH granted Student's motion to amend his complaint and December 14, 2009. The motion was unopposed. Student filed an amended complaint. On December 14, 2009, LBUSD, filed a Motion to Dismiss. On December 15, 2009, Student filed an opposition to the Motion to Dismiss. LBUSD filed a reply to Student's opposition on December 16, 2009. None of the other parties have filed a response to LBUSD's Motion to Dismiss.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the

identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Under the IDEA, due process hearing procedures apply to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

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. Education Code section 56028, subdivision (a)(3), provides that a court appointed responsible adult qualifies as a “parent” for purposes of special education rights and responsibilities.

Education Code section 56028 provides in relevant part:

(a) "Parent" means any of the following:

...

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in accordance with Sections 361 and 726 of the Welfare and Institutions Code.

....

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

(b) (1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the "parent" of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to

be the "parent" for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and Sections 361 and 726 of the Welfare and Institutions Code.

Effective January 1, 2008, the definition of “surrogate parent” in Education Code section 56050 incorporated by reference Code of Federal Regulations, title 34, part 300.519, which provides, in relevant part:

(a) General. Each public agency must ensure that the rights of a child are protected when –

- (1) No parent (as defined in section 300.30) can be identified;
- (2) The public agency, after reasonable efforts, cannot locate a parent;
- (3) The child is a ward of the State under the laws of the State; or
- (4) The child is an unaccompanied homeless youth...

...

(c) Wards of the State: In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.

...

(d) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to—

- (1) The identification, evaluation and educational placement of the child; and
- (2) The provision of FAPE to the child.

Determination of the issue in this case requires interpretation of California statutes and regulations. The goal of statutory interpretation is to ascertain and effectuate the legislative intent. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 54, citing *Mejia v. Reed* (2003) 31 Cal.4th 657, 663.) The plain meaning of a statute controls and courts will not resort to extrinsic sources to determine the Legislature’s intent unless the application of the plain meaning leads to unreasonable or impracticable results. (*Nuclear Info. & Res. Serv. v. DOT Research* (9th Cir. 2006) 457 F.3d 956, 960; *In re Jennings* (2004) 34 Cal. 4th 254, 263.)

OAH does not generally dismiss claims that have otherwise been properly pleaded. However, OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, including dismissing improper parties. Under the doctrine of “conclusiveness of pleadings,” a pleader is bound by well pleaded material allegations or by failure to deny well pleaded material allegations. (4 Witkin, Cal Procedure (5th ed. 2008) Pleading, § 454, pp. 585,587, citing Code Civ. Proc. § 431.20 (failure to controvert material allegations) and *Brown v. Aguilar* (1927) 202 C. 143, 149, 259 P. 735 (“While a pleader is not bound by allegations of evidence or conclusions of law, he is concluded by material averments of his pleading, and may not, as a rule, prove facts contrary thereto”).)

DISCUSSION

LBUSD asserts that it should be dismissed as a party to this action because, as a matter of law, based upon Student's averment in his amended complaint that his biological parents do not have educational rights, LBUSD is not the local educational agency responsible for providing Student a free and appropriate public education (FAPE)¹ Student maintains that redesignation of Student's RA as his surrogate parent triggers a change in Student's residence at the time of his transfer from Juvenile Hall to a residential placement to the location of his biological parents, not his surrogate parent.

In the present matter, Student is currently in the Los Angeles County Juvenile Hall (JH). He is eligible for special education services under the category of serious emotional disturbance. Student contends that his current IEP of April 18, 2009, if implemented, would place him at Emily Griffith Center, a nonpublic school in Larkspur Colorado. He alleges that the IEP is not being implemented because there is a dispute as to the responsible local education agency.

Student contends that between February 24, 2006, and September 18, 2009, Student's education rights were held by his court-appointed RA. Student further contends that pursuant to court order dated September 18, 2009, the same individual that was appointed as RA and resides within the boundaries of LAUSD, was reassigned to be his court-appointed surrogate. The order was a preprinted form, where the court put a strike line through the term "responsible adult" and wrote "court appointed surrogate" in its place. In that same order the court limited the right of Student's biological parents to make educational decisions for Student.

Generally, the issue of whether LACOE, LAUSD, or LBUSD, or any agency, is the responsible local education agency, for a provision of FAPE to Student, is a factual issue that can only be resolved through the evidence at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing, giving the parties the opportunity to develop a factual record.

However, Student has unequivocally pleaded that his biological parents have not had educational rights since February 24, 2006. Student's pleading is further supported by the order issued by the Los Angeles Superior Court, dated September 18, 2009, which it submitted as Exhibit "W" with its exhibits and to which judicial notice is taken. Accordingly, LBUSD is an improper party to this proceeding. Pursuant to Education Code section 56028, the location of Student's biological mother within the boundaries of LBUSD is irrelevant.

¹ LBUSD also maintained that OAH did not have jurisdiction as to it since, according to the complaint, it was only potentially involved as of the court order dated September 18, 2009, it was not involved in any educational decision-making concerning this Student. (See Ed. Code §56501.) As the determination as to whether to dismiss LBUSD was made on the substantive law material to the dispute, this issue was not addressed.

Student's mother does not have legal authority to make educational decisions on his behalf and therefore is not his parent for the purpose of determining Student's residence. Instead, during the relevant time period of this action, Student's RA, now his surrogate parent, has been empowered by the court to make educational decisions for him. Contrary to Student's contention, the RA's new status as surrogate parent does not transfer any authority back to his biological parents. (Ed. Code § 56050.)

ORDER

1. LBUSD's Motion to Dismiss is granted.
2. LBUSD shall be removed as a party from the caption, all future pleadings, and proofs of service.
3. The matter shall proceed as scheduled.

Dated: January 06, 2010

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings