

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

SAN LEANDRO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010010340

ORDER DENYING MOTION TO
DISMISS

On January 11, 2010, Student's parents, acting on behalf of Student (Student) filed a due process hearing request (complaint) naming San Leandro Unified School District (District) as the respondent.

On January 19, 2010, the District filed a motion to dismiss Student's complaint. The District contends that Student is not a resident of the District and that part or all of Student's complaint is barred by a prior settlement agreement.

APPLICABLE LAW

Special education due process hearing procedures extend 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.) A party has a right to present a complaint involving: a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free and appropriate public education (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. (Ed. Code, § 56501, subd. (a); see 20 U.S.C. § 1415(b)(6).)

Student's complaint alleges that Student's parents reside within the jurisdictional boundaries of the District. The District does not contest that, but argues that an inter-district transfer of Student to the Piedmont Unified School District (Piedmont) during the 2008-2009 school year made student a "resident" of Piedmont during the 2009-2010 school year as well. The District relies upon Education Code section 48204 which states in part that, once a pupil is permitted to transfer to another school district, the pupil does not need to reapply to attend that other district the following year.

While the District's arguments may raise a defense for the hearing in this matter, they are not sufficient to warrant dismissal of Student's case at this time. Student's complaint alleges wrongdoing by the District prior to the inter-district transfer. The complaint also alleges that the District refused to provide Student special education services during the 2009-2010 school year, after Student attempted to return to the District. These are not jurisdictional issues that may appropriately be addressed on a motion to dismiss. Instead, these issues contain both disputed facts and law which must be addressed in an administrative hearing.

The District's second contention is based upon a settlement agreement between Student and Piedmont. The District contends that the release of claims clause in that settlement agreement included the District, even though the District was not a party to the agreement. The District relies upon language in the agreement stating that the release of claims applies to "predecessors" of Piedmont, and argues that the District is such a predecessor. Once again, this is not an issue that can be resolved on a motion to dismiss. The circumstances surrounding the formation of that settlement agreement and the intent of the parties to that agreement are factual issues to be addressed at hearing, not jurisdictional issues appropriate for a motion to dismiss.

ORDER

The motion to dismiss is denied. All dates remain on calendar as previously set.

Dated: January 20, 2010

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings