

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS GATOS UNION ELEMENTARY  
SCHOOL DISTRICT.

OAH CASE NO. 2010100305

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS

BACKGROUND INFORMATION AND STATEMENT OF ISSUE

Student filed a due process request (complaint) with the Office of Administrative Hearings (OAH) on October 6, 2010, naming the Los Gatos Union Elementary School District (District). Student's complaint contains six unnumbered issues for hearing along with proposed resolutions. On October 15, 2010, the District filed a motion to dismiss the sixth issue alleged in Student's complaint. Student has not filed an opposition to the District's motion.

Issue Six alleges that the District is out of compliance with Education Code section 56325, [subdivision (a)(1)], which provides that a "local education agency shall provide the pupil with a free appropriate education, including services comparable to those described in the previously approved individualized education program, in consultation with the parent, for a period not to exceed 30 days. . . ." This section of the Education Code applies to students who transfer during the school year from one school district to another school district when both districts are not within the same special education local plan area (SELPA).

As part of his complaint, Student attaches a letter from his special education advocate to the District which addresses disputes Student has with the program offered to him by the District. However, neither Student's complaint nor the attached letter provide any information regarding the name of his prior school district, when he and his family moved, when he first enrolled in the District, or whether the District was on its summer break at the time Student first enrolled there.

In its motion, the District contends that Student's issue six must be dismissed because Education Code section 56325, subdivision (a)(1) is inapplicable to Student because he transferred school districts in the summer break and not during the school year. As discussed below, the District is correct in its legal analysis of when a new school district must provide a comparable IEP to a transferring student. However, its motion must be denied because it is

based upon information outside the scope of Student’s complaint and therefore amounts to a motion for summary judgment, a law and motion procedure not recognized under California special education law.

## ANALYSIS OF ISSUE

20 U.S.C., section 1414, subdivision (d)(2)(C)(i)(I), provides: “In the case of a child with a disability who transfers school districts *within the same academic year*, who enrolls in a new school, and who had an IEP [individualized education program] that was in effect in the same State, the local educational agency shall provide such child with a free appropriate public education, including services comparable to those described in the previously held IEP, in consultation with the parents until such time as the local educational agency adopts the previously held IEP or develops, adopts, and implements a new IEP that is consistent with Federal and State law.” (Emphasis added.) Education Code section 56325, subdivision (a)(1) sets forth similar procedures for the transfer of a special education student with an IEP from one California district to another in a different SELPA. During the first 30 days the transferring student is in the transferee district, that district must provide the student a free appropriate public education, including services “comparable” to those described in his previously approved IEP. Within those 30 days, the transferee district must adopt the previously approved IEP or develop, adopt, and implement a new IEP that is consistent with federal and state law.

In this case the District is correct that the obligation to provide a comparable IEP only applies in the case of a special education student with an IEP who “transfers into a district ... *within the same academic year*” that he was in the previous district. (Ed. Code, § 56325, subd. (a)(1); see, 20 U.S.C. § 1414(d)(2)(C)(i)(I). (Emphasis added).) There are no federal or state statutory provisions addressing the situation where a student transfers *between* school years, such as during summer vacation. OAH case law has interpreted these sections to require that the new school district is only required to provide a FAPE to the transferring student. The new district is not required to implement the former district’s IEP or give the student “comparable” services. (*Student v. Acalanes Union High School Dist.* (2008) Cal.Offc.Admin.Hrngs Case No. 2007100455, 51 IDELR 232, 108 LRP 55665.)

The language of the Federal Regulations, 34 C.F.R., part 300.323(e) (2006), mirrors the requirements of section 1414, subdivision (d)(2)(C)(i)(I), and applies to transfer students “who had an IEP that was in effect in a previous public agency in the same State” and who transfer to a new school district in the same state “within the same school year.” In the official comments to the 2006 Federal Regulations, the United States Department of Education addressed whether it needed to clarify the Regulations regarding the responsibilities of a new school district for a child with a disability who transferred during summer. The Department of Education stated that the IDEA, (20 U.S.C. § 1415(d)(2)(a)), is clear that each school district must have an IEP in place for a child at the beginning of the school year. Therefore, the new district’s responsibility is just to ensure that it develops an IEP for the child, not that it fully implements the prior district’s IEP. The Department of Education explained that the new district had the option of adopting and implementing the

previous IEP, or developing, adopting, and implementing a new IEP that met all legal requirements for an IEP. (71 Fed.Reg. 46682 (August 14, 2006).)

Although the District's legal analysis is correct, in order to determine whether that analysis is applicable to this case it is necessary to determine certain facts. First, it is necessary to know where Student previously attended school. Second, it must be determined when he transferred into the District. In its motion to dismiss, the District states that Student previously attended school at Ro Hardin Elementary School in the Hollister School District, that Student moved to Los Gatos during summer 2010, and that he attended extended school year in the District. However, none of this information is included in Student's complaint or even in the letter from Student's advocate which is attached as an exhibit to the complaint. Even if the information was included in a declaration or exhibit offered in support of the District's motion, which it is not, it would still be extrinsic evidence. The District's motion is therefore not a motion to dismiss but rather a motion for summary judgment since the only way to determine the validity of the motion is to consider and rely on information outside the information contained in the complaint.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits as to whether Student moved into the District during the school year or during a summer break.

Accordingly, the District's motion to dismiss is denied.

IT IS SO ORDERED.

Dated: October 25, 2010

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings