

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY  
SCHOOL DISTRICT AND CENTER  
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010110357

ORDER GRANTING CENTER  
UNIFIED SCHOOL DISTRICT'S  
MOTION TO DISMISS

On November 27, 2010, Student filed an amended Request for Due Process Hearing (amended complaint) against San Juan Unified School District (SJUSD), Dry Creek School District (DCSD) and Center Unified School District (CUSD).<sup>1</sup> On December 1, 2010, CUSD filed a Motion to Dismiss, alleging that it was not an appropriate party because Student does not reside within its geographical boundaries. The Office of Administrative Hearings (OAH) received no response to the Motion to Dismiss from Student.

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.)

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.)

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<sup>1</sup> On December 8, 2010, the Office of Administrative Hearings issued an order that dismissed SJUSD as a party.

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” (FAPE), 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.)

## DISCUSSION

CUSD contends that it should be dismissed as party because Student no longer lives within its geographical boundaries, and Student’s request that OAH order CUSD to grant her interdistrict transfer is outside of OAH’s jurisdiction. Student, who is deaf, formerly resided within CUSD, which does not operate a deaf/hard of hearing (HOH) program. Pursuant to an individualized educational program (IEP) dated May 13, 2010, CUSD offered Student placement at an infant/toddler deaf/HOH program in a neighboring district, SJUSD, with transportation. Student has attended that program.

On October 31, 2010, Student’s family moved out of CUSD to a new residence located within DCSD. Parent applied to DCSD for an interdistrict transfer back to CUSD, to maintain Student’s placement and services. DCSD approved the interdistrict transfer, but CUSD rejected it, apparently because the costs of the program and transportation were in dispute between DCSD and CUSD. Parent then filed for due process on November 5, 2010.<sup>2</sup>

Student’s new district, DCSD does operate a deaf/HOH program. Pending a new IEP, on November 9, 2010, DCSD offered Student an interim placement at DCSD’s deaf/HOH program. The amended complaint seeks to maintain Student’s placement within SJUSD, with transportation, and for CUSD to grant Student an interdistrict transfer because DCSD’s proposed interim placement requires excessive travel time.

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<sup>2</sup> This proceeding was mirrored in a virtually identical matter filed by Student’s sibling, who concurrently filed an amended complaint put in OAH Case No. 2010110402, for which CUSD filed a motion to dismiss. That motion is addressed by a separate order in that matter.

The amended complaint does not allege that CUSD denied her FAPE when she resided within its geographical boundaries. The complaint alleges that CUSD is denying Student a FAPE because CUSD will not approve her interdistrict transfer. OAH does not have jurisdiction over interdistrict transfer requests as jurisdiction to hear an appeal of a denial of an interdistrict transfer request lies with the county board of education or its designee. (Ed. Code, § 46001, subd. (b)(1).) Therefore, CUSD's Motion to Dismiss itself as a party is granted.

ORDER

CUSD's Motion to Dismiss itself as a party is granted. The matter will proceed as scheduled against DCSD.

Dated: December 13, 2010

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings