

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANTECA UNIFIED SCHOOL  
DISTRICT, SAN JOAQUIN COUNTY  
OFFICE OF EDUCATION, SAN JOAQUIN  
COUNTY SPECIAL EDUCATION LOCAL  
PLAN AREA, AND CHILDREN’S HOME  
OF STOCKTON.

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AND RELATED CONSOLIDATED  
ACTIONS.

OAH CASE NO. 2011060184(primary)  
2011050574  
2011050289

ORDER GRANTING MOTION TO  
DISMISS CHILDREN’S HOME OF  
STOCKTON FROM CONSOLIDATED  
COMPLAINTS

The Manteca Unified School District (District) filed a request for due process hearing in case number 2011050289 (District’s complaint) on May 4, 2011, which raised the single issue of whether the District may assess Student in the area of social/emotional in accordance with a December 2010 assessment plan. On May 12, 2011, Student filed a request for mediation and due process hearing in case number 2011050574 (Student’s first complaint), which also related to the issue of assessments in the December 2010 assessment plan. In his complaint, Student named Children’s Home of Stockton (Children’s Home), a non-public school (NPS) as a party. OAH consolidated the two cases on May 17, 2011, resulting in the first consolidated matter. On May 24, 2011, Student filed a second request for mediation and due process hearing in case number 2011060184 (Student’s second complaint). Student’s second case also involved issues relating to the December 2010 assessments. On May 30, 2011, Student fled a motion to amend, add parties and withdraw claims. On June 4, 2011, Student filed a further motion to amend. On June 8, 2011, the Office of Administrative Hearings (OAH) denied Student’s May 30 and June 4, 2011 motions without prejudice.

On June 15, 2011, Student filed three motions under OAH case number 2011060184: 1) motion to add additional parties to Student’s complaint in the first consolidated matter; 2) motion to amend Student’s complaint in the first consolidated matter; and 3) motion to consolidate the first consolidated matter with Student’s complaint identified as OAH case number 2011060184. Student included a proposed amended and consolidated complaint.

The District filed an opposition to Student's request to add a party on June 17, 2011, under the caption of the first consolidated action. Also on June 17, 2011, proposed new parties San Joaquin County Office of Education (SJCOE) and San Joaquin Special Education Local Plan Area (SELPA) filed under OAH case number 2011060184 an opposition to their addition as parties. On June 20, 2011, OAH partially granted Student's motion to amend and add parties, in which OAH granted Student's motion to add SJCOE and the SELPA as parties to these consolidated cases.

On June 23, 2011, Student filed a motion for clarification of OAH's June 20, 2011 order. OAH granted Student's motion on June 27, clarifying that Student's motion to amend and add parties pertained to Student's second complaint in case number 2011060184. Therefore, Student's proposed complaint was deemed to add SJCOE and SELPA to Student's second complaint, a proposed copy of which was filed with OAH on June 15, 2011, and served on all parties on that date.

On June 28, 2011, SJCOE and SELPA jointly filed a notice of insufficiency as to Student's amended complaint. Student filed an opposition on July 1, 2011. On July 5, 2011, OAH deemed Student's amended complaint sufficient.

Between July 5, 2011, and August 19, 2011, the parties filed a plethora of additional motions and oppositions unrelated to the issue of OAH jurisdiction and the request to dismiss Children's Home as a party to the complaints.

On August 12, 2011, ALJ Bob Varma held a telephonic trial setting conference (TSC) with the parties and set the consolidated matters for due process hearing on October 24 through 26, 2011, with a prehearing conference set for September 21, 2011.

1. Motion as to Children's Home. At the TSC, the ALJ, *sua sponte*, raised the issue of whether OAH has jurisdiction over Children's Home. Student stated that he had addressed the issue of OAH's jurisdiction over Children's Home in prior pleadings. COE stated that it had considered the question as well; however, no party had filed a motion to determine whether OAH has jurisdiction over Children's Home. It was represented by Children's Home that it is a NPS, is unrepresented in this matter and was participating in the proceeding because Student currently attends Children's Home. ALJ Varma ordered the parties to file written arguments on whether OAH has jurisdiction over Children's Home, and serve a copy upon each other, by close of business of August 19, 2011. All parties complied and filed briefs on August 19, 2011. Additionally, on August 19, 2011, Children's Home filed a written request to be dismissed from the consolidated complaints.

#### 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" (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.)

OAH is vested with jurisdiction over *public agencies*, pursuant to Education Code section 56500 et seq., under the IDEA as follows:

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.)

An administrative tribunal, like a court, has jurisdiction to determine its own jurisdiction and power to act. (*People v. Williams* (2005) 35 Cal. 4th, 817.)

## DISCUSSION

It is undisputed that Children’s Home is a NPS and is a privately operated non-profit entity certified by the California Department of Education. It is not under the administrative control of or in any way a component of the District, SJCOE, the SELPHA or any other public agency or institution.

Student acknowledges that an ALJ has the legal ability to exercise his authority and make his own motion, *sua sponete*, to determine whether OAH has jurisdiction over Children’s Home. Additionally, Children’s Home filed its own request for dismissal.

Student acknowledges that Student was *placed* at Children’s Home by a public agency and correctly states that the “special education local plan area shall be responsible for providing appropriate education to individuals with exceptional needs residing in licensed children’s institutions located in the geographical area covered by the local plan.” (Ed. Code, §§ 56155, and 56156.4, subd. (a).) Student further indicates that Student is not only a resident of the geographic area of the District, but of SJCOE and the SELPA, all of which are public agencies. Student acknowledges that a child with special needs qualifies for placement in a NPS when the public school system cannot provide the child with instruction and services necessary to meet his educational needs. As a result, each NPS operates under a

master contract with a host district, special education local plan area or county office of education. It does not follow that this “contract” creates a public agency status for the NPS.

Student further argues that the NPS is regulated by the California Department of Education, and had Children’s Home not been certified as “non-public” the District would not have placed Student there. State regulatory functions involving an NPS, such as certification and determination of State educational curriculum, is not part of the IDEA, nor does compliance with State regulations create a public agency. As Student points out in this argument, the District, a public agency, placed Student at the NPS.

Student contends that the allegations and claims against Children’s Home in Student’s May 12, and May 24, 2011 amended consolidated complaints deal solely with the IDEA. As such, OAH has jurisdiction over Children’ Home regardless of whether Children’s Home is a NPS. This logic is simply wrong, and is not supported by Student’s supporting citation of California Education Code section 56501, subsection (a). Again, Student is failing to denote the statutory definition that it is a *public education agency* which may be involved in a due process hearing. Student has failed to present any legal authority or persuasive arguments to extend OAH jurisdiction to Children’s Home. Children’s Home of Stockton is dismissed from these consolidated matters.

ORDER

The Motion to Dismiss Children’s Home of Stockton as a party to the consolidated cases in this matter is granted. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

Dated: August 29, 2011

/s/  
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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings