

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT AND LOS ANGELES  
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2011070654

ORDER DENYING MOTION TO  
DISMISS

On July 19, 2011, Student filed a Request for Due Process Hearing (complaint) against the Los Angeles Unified School District (District) and Los Angeles County Office of Education (LACOE). On July 29, 2011, LACOE filed a Motion to Dismiss, alleging that that it is not an appropriate party as it had no duty to provide Student with a free appropriate public education (FAPE), including funding his residential placement, after Student was released from juvenile hall and entered his out-of-state residential placement. Student and the District did not submit a response.

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.) The Individuals with Disabilities Education Act (IDEA) allows states the flexibility to determine which agency provides the assessments or related services required by the individualized education program (IEP) process. (See 20 U.S.C. § 1412(a)(12).)

Special education due process hearing procedures extend to pupils who are wards or dependants of the court, to their parents or guardians, and to the public agencies involved in any decisions regarding pupils. (Ed. Code, § 56501, subd. (a).)

IDEA due process hearing requests brought by a pupil against a public agency properly include determinations of the public agency responsible for providing special

education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

While a student is detained in a county juvenile hall, the local county office of education is the responsible local education agency for providing a student with a FAPE. (Ed. Code, §§ 48645.1, 48645.2, 56150.)

When a residential placement is recommended by an IEP team, the LEA, such as a county office of education, is financially responsible for transportation to and from the residential placement and all special education instruction and non-mental-health related services. (Cal. Code Regs., tit. 2, §§ 60010, subd. (k) [including county offices of education within the definition of local education agency], 60110, subd. (b)(2) [for residential placements, “The LEA shall be responsible for providing or arranging for the special education and non-mental-health related services needed by the pupil.”], & 60200, subd. (d).)

California law determines which LEA is responsible for the provision of a FAPE. In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in sections 48200 and 48204. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57 (interpreting §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located).) Under section 48200, children between the ages of 6 and 18 must attend school in the district “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.)

## DISCUSSION

Student complaint does not contest the appropriateness of his present out-of-state residential placement, which LACOE offered in his November 15, 2010 IEP, and which LACOE implemented as Student was transported and presently attends Deveruex Treatment Center (Deveruex), located in Florida. The dispute in the complaint involves who is responsible for the cost of Student’s placement and implementation of his IEP, the District or LACOE, as no LEA has contacted Deveruex regarding payment or implementation of Student’s IEP. LACOE asserts in its motion to dismiss that the District, not LACOE, is the responsible LEA because LACOE’s responsibility to provide Student with a FAPE, including payment to Deveruex and IEP implementation, transferred to the District when Student left juvenile hall and entered Deveruex.

The recent cases that LACOE cites in support of its position that it should be dismissed as a party do not support its position that it should be dismissed as a party before hearing. In the cited cases, the responsibility of Orange County Office of Education and LACOE to provide the students with a FAPE was decided after a full administrative hearing. LACOE did not establish that a triable issue for hearing does not exist in this matter regarding who is the responsible LEA to presently implement Student’s IEP and to pay Deveruex. Therefore, LACOE’s motion to dismiss is denied.

ORDER

LACOE's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: August 5, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings