

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT(S) ON BEHALF STUDENT,

v.

ST. HOPE PUBLIC SCHOOLS, SAN
JUAN UNIFIED SCHOOL DISTRICT,
AND EL DORADO SELPA.

OAH CASE NO. 2011110442

ORDER DENYING SAN JUAN
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On November 10, 2011, Parent filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH), on behalf of Student, against Sacramento City Unified School District, St. Hope Public Schools (SHPS), San Juan Unified School District (SJUSD), and El Dorado SELPA. (SELPA). At Student's request, OAH dismissed Sacramento City Unified School District as a party, on November 29, 2010.

On November 17, 2011, SJUSD filed a motion to dismiss it as a party. On November 22, 2011, Student and SHPS filed oppositions to SJUSD's motion to dismiss.

APPLICABLE LAW AND DISCUSSION

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.)

In California, the determination of which agency is responsible to provide education to a particular child is controlled by the residency of the parent or legal guardian, as set forth in Education Code, 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).) IDEA hearings properly include declaratory relief actions regarding residency. (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.) Thus, in an IDEA hearing, OAH has jurisdiction to entertain declaratory relief actions regarding which agency is responsible for providing special education to a particular student.

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, SJUSD contends that it is not obligated to provide special education services to Student who allegedly requires home hospital instruction (HHI) for the 2011-2012 school year because Student has not attended a SJUSD school since January 2011 when Student enrolled in Sacramento Charter High School (SCHS). SJUSD acknowledges that Student lives within its boundaries. SJUSD further contends that the complaint does not allege that SJUSD is presently providing Student with educational services or that SJUSD should be providing Student with educational services.

Student states the complaint clearly asserts that SJUSD is a potential local educational agency (LEA) which is responsible for providing Student with the HHI. SHPS also asserts that facts alleged in the complaint establish that SJUSD, not SHPS or SCHS, are legally required to provide the education services to Student in HHI.

Student and SHPS are correct. The complaint states that Student had been attending SCHS when Student's medical condition required HHI. SHPS and SCHS assert that Student's district of residence, SJUSD, is responsible for the HHI. SJUSD states it is not responsible because Student is enrolled in a charter school outside the district.

This situation creates a conundrum for a Student who is caught between two educational agencies disputing which is the responsible LEA. Thus, a special education student may utilize the due process proceeding as a means of obtaining a declaration of which agency is responsible for providing education services to a particular student.

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction. The determination of which agency amongst the respondents is the responsible LEA requires the presentation of evidence and legal argument and, thus, is not suitable for determination by means of a motion to dismiss.

ORDER

San Juan Unified School District's motion to dismiss it as a party is denied. All dates currently set in this matter are confirmed.

Dated: December 02, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings