

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GLENDALE UNIFIED SCHOOL
DISTRICT, POMONA UNIFIED SCHOOL
DISTRICT, AND NORWALK-LA
MIRADA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012060908

ORDER DENYING NORWALK-LA
MIRADA'S MOTION TO DISMISS

PROCEDURAL BACKGROUND

Student filed an initial request for due process hearing (herein, complaint) on June 15, 2012, naming as respondents the Glendale Unified School District (Glendale), the Pomona Unified School District (Pomona), the Norwalk-La Mirada Unified School District (Norwalk), and the Los Angeles County Office of Education.¹ Student filed a motion for stay put on June 26, 2012. In separate Orders dated June 27 and June 28, 2012, the Office of Administrative Hearings (OAH) found Student's complaint insufficient as to all respondents. On July 5, 2012, OAH denied Student's motion for stay put without prejudice due to the lack of supporting evidence on which to base an order for stay put.

Student filed an amended complaint on July 11, 2012. Student's amended complaint alleges that he is a conserved adult eligible for special education. He contends that he had attended school in Glendale under an individualized education program (IEP) that placed him at a non-public school in Pasadena named Villa Esperanza. Student contends that Glendale improperly dis-enrolled him on June 15, 2012, based upon its determination that Student's father (Father), who is Student's conservator, was no longer a resident of Glendale. Student states that Father placed him in an adult care facility called Dare2Care on May 23, 2012, but that Pomona refuses to enroll Student because Father does not reside in Pomona. Student further alleges that Father does not presently have a permanent residence, but is staying temporarily in Norwalk in the home of friends. Student alleges that Norwalk also refuses to enroll him because Father does not permanently reside in Norwalk.

¹ OAH found Student's amended complaint insufficient as to the Los Angeles County Office of Education in an Amended Order issued July 24, 2012. Student has not yet filed a second amended complaint.

On July 12, 2012, Student filed a motion for reconsideration of the Order denying his motion for stay put. The pleading renews Student's original request for stay put. On July 24, 2012, OAH issued an order for supplemental evidence regarding Student's renewed motion for stay put. Student's motion for stay put is still pending.

On July 23, 2012, Norwalk filed a motion to dismiss Student's amended complaint. Norwalk contends that Student's complaint must be dismissed as to it because Father has admitted he does not permanently reside in Norwalk. Norwalk also moves to dismiss because it contends that Father did not pursue enrolling Student after making initial contacts with Norwalk personnel. Norwalk provides two declarations under penalty of perjury from staff stating that Father initially came to the District to discuss enrolling Student and that Father admitted to staff that he was only staying with friends temporarily in Norwalk and did not know where he would be living permanently in the future. Staff informed Father of the enrollment process and mailed enrollment papers to Father, but Father has never completed the paperwork to enroll Student at Norwalk and has not kept appointments with staff to discuss Student's potential enrollment.

Student has not filed an opposition to Norwalk's motion or otherwise responded to it.

DISCUSSION

The declarations presented by Norwalk contain facts disputed in Student's complaint. OAH has the statutory authority to hear motions for stay put, and therefore has statutory authority to decide motions for stay put based upon documentary evidence presented by the parties. OAH will also 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.....) However, there is no statutory authority either in the federal Individuals with Disabilities Education Act or state law that provides for a summary judgment procedure. Although Norwalk entitles its motion a motion to dismiss, it is actually a motion for summary judgment because it is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. In order to grant Norwalk's motion, OAH would have to make findings with regard to disputed facts based upon evidence, such as the declarations of Norwalk staff. Accordingly, Norwalk's motion to dismiss is DENIED. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: July 26, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings