

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COUNTY OF SACRAMENTO OFFICE OF
EDUCATION AND COUNTY OF
SACRAMENTO DEPARTMENT OF
PROBATION.

OAH CASE NO. 2013020042

ORDER REQUESTING FURTHER
BRIEFING ON PROBATION
DEPARTMENT'S MOTION TO
DISMISS

On January 31, 2013, Parent on behalf of Student filed a due process hearing request (complaint) naming the County of Sacramento Office of Education (SCOE) and the County of Sacramento Department of Probation (Probation) as respondents. On February 11, 2013, Probation filed a motion to dismiss asserting that it is not a proper party to this action because it is not a responsible public agency under special education laws. On February 14, 2013, Student filed opposition. As discussed below, OAH requires additional information before a ruling may be made on the pleadings.

ORDER

Within five business days of this order, each party shall file with OAH information and briefing regarding the following, and include sworn declarations, and applicable individualized education programs and orders of the juvenile court, supporting any factual assertions included in its briefing:

1. The parties shall brief the legal issue of whether Probation is a public agency pursuant to 34 Code of Federal Regulations, parts 300.33 (2006), and California Education Code, section 56501, subdivision (a), as discussed in *Student v. California Department of Mental Health* (October 26, 2009) Office of Administrative Hearings case number 2009050920. In particular, the parties should address whether, to what extent, and under

what authority, Probation decides the residential placement of incarcerated students with special needs. ¹

Dated: February 20, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

¹ Probation argued in its moving papers that it cannot respond to Student's allegations without the Juvenile Court's permission, which can take up to 60 days under Welfare and Institutions Code section 827, subdivisions (a)(2)(E) and (F). This order does not require Probation to brief more than its statutory and actual involvement, if any, in residential placement decisions for special education students. However, Student should provide statutory and documentary support for his allegations that Probation was responsible for providing him with educational services and participated in decisions regarding Student's placement.