

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013040167

ORDER DENYING MOTION TO
DISMISS

On April 3, 2013, Student filed a Request for Due Process Hearing (complaint) naming Santa Monica-Malibu Unified School District (District) as the respondent. The complaint alleged denials of a free appropriate public education (FAPE) spanning the two years prior to filing, arising out of alleged failures to assess and alleged deficiencies in individualized educational programs (IEP's) dated June 27, 2011; November 17, 2011; March 16, 2012; June 20, 2012; July 23, 2012; September 27, 2012; and October 25, 2012. The complaint alleged, in pertinent part, that Student was incarcerated from April 4, 2012, until July 26, 2012, during which time he "received educational interventions" provided by Los Angeles County Office of Education (LACOE). The complaint argued that District was nevertheless the responsible local educational agency (LEA) during this time, since Student's parents continued to reside within District.

On April 18, 2013, District filed a Motion to Dismiss "all issues and proposed remedies" pertaining to the June 20, 2012, and July 23, 2012, IEP's, while Student was detained, arguing that while Student was detained, an exception applied to the general rule that the responsible LEA is determined by parent's residency. Specifically, District argued that when students have been adjudicated by the juvenile court for placement in a juvenile hall, LACOE is the LEA responsible for providing special education and related services. In support, District attached pages of the June 20, 2012, and July 23, 2012, IEP's to the Motion, arguing that these evidenced that LACOE was the responsible LEA during that time.

On April 23, 2012, Student opposed the Motion, arguing that the Student's incarceration did not remove from District the legal responsibility to offer or provide FAPE.

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.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child’s parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.) Education Code sections 48645.1, 48645.2 and 56150 pertain to special education programs for students incarcerated in juvenile hall, and provide that special education programs shall be provided by a juvenile court school operated by the county board of education.

DISCUSSION

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure. Here, although District may well prevail on the legal interpretation regarding residency, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, based on the facts pertaining to the dates of Student’s incarceration, and the entities that were responsible for his IEP’s during that time, none of which facts have yet been adjudicated. The application of the law to those facts must be decided after the development of a full factual record at hearing. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: April 24, 2013

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings