

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASADENA UNIFIED SCHOOL  
DISTRICT AND PASADENA ROSEBUD  
ACADEMY.

OAH CASE NO. 2014020270

ORDER DENYING ROSEBUD  
ACADEMY CHARTER SCHOOL'S  
MOTION TO DISMISS

On March 4, 2014, Pasadena Rosebud Academy Charter School (Rosebud Charter) filed a motion to dismiss it as a party. On March 5, 2014, Student filed opposition. As directed by a March 7, 2014 order of the Office of Administrative Hearings (OAH), Pasadena Unified School District (District) filed a response on March 11, 2014.

Rosebud Charter states that the District is the granting agency of its charter. Pursuant to the charter's terms, and the Education Code provisions cited therein, Rosebud Charter claims to be a public school of the District for purposes of special education. Rosebud Charter therefore asserts that the District is the local educational agency (LEA) solely responsible for Student's special education and that it, like any other public school within the District, is not a public agency that can be named in a due process proceeding.

Student asserts that the complaint relates to Rosebud Charter's failure to implement related services provided by his individualized education program (IEP), which includes accommodations within his general education classroom. Therefore, Student claims Rosebud Charter is a proper and necessary party to the due process proceeding.

District acknowledges that it issued the charter, which states that Rosebud Charter is deemed to be a public school within the District for purposes of special education, pursuant to Education Code section 47641, subdivision (b). However, the District also cites the charter agreement provisions which states that Rosebud Charter must adhere to all federal and state laws, as well as SELPA policies regarding special education. The District asserts that Rosebud Academy operates autonomously from the District, with the exception of the District's oversight. District notes that this includes Rosebud Charter's operation of its general education programs, quoting the charter provision with states that District shall not be liable for claims arising from the performance of acts, errors, or omissions by Charter Rosebud, as long as District has complied with all oversight responsibilities required by law.

## 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.)

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. A summary judgment requires the submission and consideration of evidence. In a special education due process filing, evidence regarding issue determination is received at hearing.

Here, Student’s opposition and the District’s response claim that the charter provisions do not bar Rosebud Charter from being named as a party for actions that fall under other provisions of the charter agreement. The issue requires the consideration and weighing of evidence and, therefore, is reserved for hearing. In this regard, Student bears the burden of proving that Rosebud Charter is a proper party for a due process proceeding, under federal and state special education law.

## ORDER

1. Rosebud Charter’s motion to dismiss is denied.
2. The matter shall proceed as scheduled.

DATE: March 12, 2014

/s/

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CLIFFORD H. WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings