

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

SAN DIEGUITO UNION HIGH SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016021044

ORDER DENYING MOTION TO  
DISMISS

On February 25, 2016, San Dieguito Union High School District filed a due process complaint naming Student as respondent. Administrative Law Judge Cole Dalton presided over the hearing on March 22, 2016. Both parties presented documentary evidence and witness testimony. At the conclusion of the presentation of evidence, the ALJ continued the hearing to March 29, 2016, to allow the parties to submit written closing briefs.

On March 29, 2016, Student submitted a motion to dismiss District's case on the grounds that Student moved out of District, making the hearing decision moot. District filed an opposition on March 29, 2016, arguing that a factual dispute regarding residency was not considered at hearing and Student should not be allowed to submit new evidence after the hearing.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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.)

In California, Government Code section 244 lists "the basic rules generally regarded as applicable to domicile [legal residency]." (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1114.)

Government Code, section 244, states in relevant part:

In determining the place of residence [domicile] the following rules shall be observed:

- (a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.
- (b) There can only be one residence.
- (c) A residence cannot be lost until another is gained.
- (f) The residence can be changed only by the union of act and intent.

## DISCUSSION

Student filed a motion to dismiss after the close of evidence. She has not provided a legal or factual basis upon which to reopen the hearing for submission of evidence that did not exist while the hearing was in progress.

In her motion, Student argued that she moved out of the District on March 25, 2016, and, since she no longer resided or was a Student in District, the assessment issue was moot. However, Student provided no evidence that she has moved, and, if so, where to. Student resided within District's jurisdictional boundaries at the time of the due process hearing and District remains entitled to a determination of its assessment issue.

## ORDER

Student's Motion to Dismiss is denied. A decision shall be rendered on the merits.

IT IS SO ORDERED.

DATE: April 04, 2016

DocuSigned by:

*Cole Dalton*

COLE DALTON

Administrative Law Judge...

Office of Administrative Hearings