

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

Student,

v.

LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT; LEROY BACA,
SHERIFF; LOS ANGELES COUNTY
OFFICE OF EDUCATION; SOUTHWEST
SPECIAL EDUCATION LOCAL PLAN
AREA; HACIENDA LA PUENTE
UNIFIED SCHOOL DISTRICT; PUENTE
HILLS SPECIAL EDUCATION LOCAL
PLAN AREA; COUNTY OF LOS
ANGELES; AND CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2009010071

**ORDER GRANTING AND DENYING
MOTIONS TO DISMISS OR
RESTORE PARTIES AND ORDER
DISMISSING COMPLAINT**

On December 23, 2008, Carly Munson, attorney for Student filed a request for due process hearing.

On January 7, 2009, the California Department of Education (CDE) moved to be dismissed as a party.

On January 9, 2009, the Hacienda La Puente Unified School District (Hacienda) moved to be dismissed as a party. On January 13, 2009, Hacienda moved for an order restoring the Los Angeles County Sheriff's Department (Sheriff's Department) as a party (see below).

On January 13, 2009, the Puente Hills Special Education Local Plan Area (Puente Hills) moved to be dismissed as a party.

On January 15, 2009, Student moved for an order restoring Sheriff Leroy Baca, the Sheriff's Department, and Jack O'Connell as parties (see below).

On January 27, 2009, the Southwest Special Education Local Plan Area (Southwest) moved to be dismissed as a party.

On January 27, 2009, the Los Angeles County Office of Education (LACOE) moved to be dismissed as a party.

On January 30, 2009, Student moved to strike the motions to be dismissed as parties made by LACOE and Southwest on January 27, 2009, and for sanctions.

All motions are opposed, have been fully briefed, and are addressed here.

BACKGROUND

On December 23, 2008, attorney Carly Munson of the Disability Rights Legal Center filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) on behalf of Student and a purported class of students similarly situated. The complaint alleges that there is no system for delivering special education to disabled students in the Los Angeles County Jail (Jail), and that several parties have acknowledged that fact. According to the complaint, Student, like the other members of the purported class, is between 18 and 22 years of age, has not yet received a high school diploma, has received special education and related services in the past, and continues to require and be eligible for special education and related services. However, Student alleges, he is confined prior to trial in the Jail and, like the others in his purported class, is receiving no special education or related services, and is thereby being denied a free appropriate public education (FAPE).

Student's complaint prays broadly for systemic relief, from all the parties named in the caption, to ensure the delivery of special education and related services to all eligible students in the Jail. He states in one pleading that "an entire special education system must be created before [Student] will be able to receive adequate relief." The complaint also seeks relief from Leroy Baca, the Sheriff of Los Angeles County, from the Sheriff's Department, and from Jack O'Connell, the Superintendent of Public Instruction, but OAH administratively removed those three parties from the caption of the matter on the ground that they were not proper parties to a special education due process hearing under Education Code section 56501, subdivision (a). In addition, OAH declined to file the complaint as a class action, since it has no authority to consider such actions, and filed it as a complaint by an individual instead.

On December 23, 2008, attorney Munson also filed a nearly identical complaint, on behalf of another named student and the same purported class, seeking identical relief. On that same day both students moved to consolidate their cases. OAH opened the cases of the two named students separately (see, OAH Case No. 2009010064) and administratively removed the Sheriff, the Sheriff's Department, and the Superintendent as parties from the other matter as well. On January 8, 2009, the motion to consolidate the two matters was denied.

On January 2, 2009, the Los Angeles County Office of Education (LACOE) and the Southwest Special Education Local Plan Area (Southwest) filed a Notice of Insufficiency (NOI) of Student's complaint, and a motion to dismiss that complaint. The Hacienda La

Puente Unified School District (Hacienda) and the Puente Hills Special Education Local Plan Area (Puente Hills) also filed NOIs. On January 8, 2009, OAH issued a Determination of Sufficiency of Due Process Complaint in which OAH ruled that Issues 1A and 1B of Student's complaint sufficiently alleged specific violations of Student's own rights under the Individuals With Disabilities in Education Act (IDEA). However, OAH ruled insufficient all other issues alleged in the complaint, either on the ground that they alleged injuries to the purported class, or alleged claims under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, or the state and federal constitutions, which are outside the jurisdiction of OAH. Student was given leave to amend his complaint, but declined to do so. Thus, the only allegations that remain to be heard in this matter relate to the alleged denial of a FAPE to Student himself.

APPLICABLE LAW AND DISCUSSION

Students between 18 and 22 years of age

Among the individuals with exceptional needs entitled to special education and related services in California is a disabled student who is between the ages of 18 and 22 years, inclusive. Eligibility continues beyond age 18 for a student who is receiving or eligible for special education before his 18th birthday; and who has not completed his prescribed course of study, met proficiency standards, or graduated from high school with a regular high school diploma. (Ed. Code, § 56026, subds. (c)(3), (4).)¹

There is no doubt that Congress and the Legislature intended, in the IDEA and related statutes, that eligible students continue to receive special education and related services while incarcerated in either a juvenile or adult correctional facility. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. §§ 300.2(b)(1)(iv); 300.324(d)(2006); Ed. Code, § 56000, subd. (a).) The only exception is for a student 18 to 22 years of age who, in his educational placement prior to incarceration, was not identified as being a child with a disability or did not have an individualized education program (IEP). (20 U.S.C. § 1412(a)(1)(B)(ii); Ed. Code, § 56040, subd. (b).) Student alleges that he was receiving special education and related services under an individualized education program (IEP) dated August 24, 2007, and supplemented by an addendum IEP dated May 5, 2008, until his incarceration in the Jail on June 19, 2008. Assuming those allegations are true, that exception does not apply here.

Under IDEA, each state determines the state agency responsible for providing special education and related services to an eligible student who is incarcerated in an adult facility. (20 U.S.C. § 1412 (a)(11)(C).) The Legislature has fixed responsibility on special education local plan areas (SELPAs) and county boards of education for providing a FAPE to special education students confined in juvenile court schools and licensed children's institutions, such as foster homes. (§§ 48645.2; 48850, subds. (b)-(c); 56156.4, subds.(a)-(c).) However, no party cites, and research does not reveal, any statute or regulation specifically allocating responsibility for the special education of eligible students 18 to 22 years of age who are

¹ All citations herein are to the California Education Code unless otherwise noted.

incarcerated in an adult correctional institution, such as a county jail. That responsibility must be determined by resort to more general rules.

Residency and responsibility for providing a FAPE

The primary responsibility for providing a FAPE to a disabled student rests on a local educational agency (LEA). (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.) As a general rule, a student's school of attendance is determined by the residency of his parent or guardian. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App. 4th 47, 57.) Section 48200, California's compulsory attendance law, requires that a student between 6 and 18 years of age attend school in "the school district in which the residency of either the parent or legal guardian is located." That district usually becomes the LEA responsible for providing a FAPE to an eligible student. (20 U.S.C. § 1401(19); 34 C.F.R. § 300.28(a)(2006); Ed. Code, § 56026.3.)

The Legislature has fixed responsibility for the provision of a FAPE to eligible students between 18 and 22 years of age in section 56041, which provides in relevant part:

Except for those pupils meeting residency requirements for school attendance specified in subdivision (a) of Section 48204, and notwithstanding any other provision of law, if it is determined by the individualized education program team that special education services are required beyond the pupil's 18th birthday, the district of residence responsible for providing special education and related services to pupils between the ages of 18 to 22 years, inclusive, shall be assigned, as follows:

(a) For nonconserved pupils, the last district of residence in effect prior to the pupil's attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local educational agency.

Student argues that section 56041 does not apply to him because he is within the exception set forth in section 48204, subdivision (a)(3), which provides, in pertinent part:

(a) Notwithstanding Section 48200, a pupil complies with the residency requirements for school attendance in a school district, if he or she is any of the following:

....

(3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation.

Student argues that he was emancipated when he became 18 years of age, and so he is unaffected by the general rule of section 56041.

It is sometimes said that a person is emancipated when he reaches the age of majority. (See, e.g., 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, § 298, p. 397.) However, emancipation also has another meaning. A person under the age of 18 years can become an emancipated minor by marriage, by being on active duty in the armed forces, or by receiving a declaration of emancipation. (Fam. Code, § 7002.) A declaration of emancipation is obtained by filing a petition in the Superior Court. (Fam. Code, §§ 7120-7122.)

Student's interpretation of section 48204, subdivision (a)(3) overlooks its purpose, which is to make an alteration to the residency rule of section 48200's compulsory attendance law. The prefatory language of subdivision (a), that "a pupil complies with the residency requirements for school attendance in a school district" if he is within one of the exceptions, suggests that the subject matter of the subdivision is compulsory attendance. There is no need in that subdivision for a rule determining the residency of a student no longer subject to compulsory attendance.

More importantly, Student's interpretation effectively repeals section 56041. If subsection 48204, subdivision (a)(3) exempts all students 18 and older from section 56041, the latter section has no one left to affect, since it applies only to students 18 through 21 years of age. The exception would abolish the rule. It is basic to statutory construction that statutes are to be harmonized if possible. (*Garcia v. McCutchen* (1997) 16 Cal.4th 469, 476.) Absurd results are to be avoided. (*Interinsurance Exchange of Auto. Club of Southern Cal. v. Ohio Cas. Ins. Co.* (1962) 58 Cal. 2d 142, 153.) An implied repeal may be found "only when there is no rational basis for harmonizing the two potentially conflicting statutes [citation], and the statutes are 'irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation.'" (*Garcia v. McCutcheon, supra*, 16 Cal.4th at p. 477, quoting *In re White* (1969) 1 Cal.3d 207, 212)

If section 48204, subdivision (a)(3) refers to emancipated minors rather than to students who have reached the age of majority, it fits appropriately with the other subsections of section 48204, subdivision (a),² in modifying residency rules for the compulsory attendance law, and leaves section 56041 whole and operative. Moreover, the reference in section 48204, subdivision (a)(3), to a student "whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation" appears to be a reference to the emancipation petition process for minors in Family Code sections 7120 through 7122. A

² The other exceptions to section 56041 set forth in section 48204(a) are:

- (1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home
- (2) A pupil for whom interdistrict attendance has been approved
- (4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district
- (5) A pupil residing in a state hospital located within the boundaries of that school district

different section of the Family Code relieves parents of responsibility when a child reaches the age of majority, and it does not refer to that event as emancipation. (Fam. Code, §7505, subd. (c).)

Student argues further, without authority, that the Legislature could not have intended to apply section 56041 to a county jail inmate because it would produce the "unworkable," "nonsensical," and "absurd" result that many different districts would be responsible for various inmates' programs. Student asserts that the Legislature could not have intended that a school district in San Francisco or Sacramento, for example, would have to "enter" a jail hundreds of miles away to deliver special education and related services.

However, it is not uncommon for a responsible district to administer a distant placement. As stated by Hacienda's Director of Special Education in an uncontested declaration, "[i]t is possible and a common practice for school districts and non-public schools/agencies to enter into interagency agreements and contract for the provision of special education and related services, even if the schools/agencies are separated by hundreds of miles." (See, e.g., *Shapiro v. Paradise Valley Unified Sch. Dist. No. 69* (9th Cir. 2003) 317 F.3d 1072 [Arizona placement by California district].) The Education Code contemplates and regulates out-of-state placements. (§ 56365, subds. (e)-(i).) A district can discharge its responsibilities by such means as funding and contracting without having to physically enter a distant facility. The Legislature could well have concluded that the advantages of relying on the district that knows the student best outweigh any administrative difficulties that choice might cause. If there are such difficulties in applying section 56041 in adult correctional facilities, that is a proper subject for the Legislature.

Properly construed, section 48204, subdivision (a)(3) refers only to emancipated minors, and does not exempt Student from the general rule of section 56041. The district responsible for his special education and related services in the Jail is the "last district of residence in effect prior to the pupil's attaining the age of majority . . ." (§ 56041, subd. (a).) No current party fits that definition, and nothing in this Order is binding on any entity not a party to these proceedings.

Any decisions regarding a pupil

Special education due process hearing procedures extend to the parent or guardian of a pupil, in some circumstances to the pupil, and to "the public agency involved in any decisions regarding a pupil." (§ 56501, subd. (a).) In a broad sense, many public agencies have made decisions regarding Student. Student argues, for example, that the Sheriff has made decisions regarding him because he regulates Student's housing, medical care, diet, exercise, and outdoor exposure in the Jail. However, "decisions regarding a pupil," as used in section 56501, subdivision (a), has a narrower meaning that is focused on decisions about a pupil's special education placement or services. The subsection goes on to provide that, "[T]he parent or guardian and the public agency involved may initiate the due process hearing procedures prescribed by this chapter under any of the following circumstances:"

(1) There is a proposal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child.

(2) There is a refusal to initiate or change the identification, assessment, or educational placement of the child or the provision of a free appropriate public education to the child.

(3) The parent or guardian refuses to consent to an assessment of the child.

(4) There is a disagreement between a parent or guardian and a local educational agency regarding the availability of a program appropriate for the child, including the question of financial responsibility, as specified in Section 300.148 of Title 34 of the Code of Federal Regulations.

That subject matter also describes OAH's jurisdiction in a special education due process hearing. (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

The phrase "involved in any decisions regarding a pupil" must be read in the context of its function, which is to describe proper parties to the due process proceeding that the subsection authorizes. The phrase logically refers to the decisions that a parent or agency can litigate in a due process hearing, and that OAH has jurisdiction to review. It would be irrational for the Legislature to authorize making an agency a party to a due process hearing because it made decisions a parent could not address in a due process hearing and an ALJ could not review or alter. The phrase, therefore, does not include system-wide decisions about the provision of special education generally, or agency-wide compliance with law, or the structure of special education programs in particular institutions. Those decisions cannot be reviewed by OAH, and are not "decisions regarding a pupil" within the meaning of section 56501, subdivision (a). That subsection only authorizes joinder of a party who has been involved in the sorts of decisions about educational programming for a particular student that a parent or agency may challenge in a due process hearing, and that OAH has jurisdiction to review and affect.

DETERMINATION OF MOTIONS

Hacienda La Puente Unified School District

The only connection between Hacienda and Student is that Hacienda provides adult education in the Jail. Penal Code section 4018.5 provides that a county sheriff may provide for the vocational training and rehabilitation of prisoners in the county jail by entering into an agreement with a school district maintaining secondary schools "for the maintenance, by the district, of adult education classes conducted pursuant to the Education Code." Pursuant to that authority, the Sheriff and Hacienda first entered into a contract in 1973 under which

Hacienda began to provide adult education in the Jail. It has done so ever since. Both the earliest and the current contract are attached to Hacienda's motion to dismiss.

Student argues that by undertaking adult education in the Jail, Hacienda became responsible for all special education required for inmates of the Jail. His claim is not supported by any law, regulation, or decision, or by any term of the contract.

The contract provides that the District shall "establish, supervise, and maintain classes for adult education" in the Jail. The education program to be offered consists of basic elementary school subjects, required high school subjects, and elective subjects leading to elementary or high school graduation, including such subjects as English, reading, writing, arithmetic, and the like. Nothing in the contract mentions special education, and it is clear from the terms of the contract that neither party contemplated the delivery of special education and related services. The contract may be terminated on 30 days' notice by either party, and must be renewed annually.

Elementary principles of contract law forbid Student's interpretation of the contract. The language of a contract, construed according to ordinary and popular usage, governs its interpretation. The intention of the parties is to be ascertained from the writing alone, if possible. The contract extends only to those things concerning which it appears that the parties intended to contract. (Civ. Code, §§ 1638, 1639, 1644, 1648.) The terms of the contract do not create the obligation Student finds in them.

It is clear from the contract that the parties intended that Hacienda furnish only adult and vocational education. The original 1973 contract was subject to the approval of the Bureau of Adult and Continuing Education of CDE. Adult education is regulated by sections of the Education Code that are separate from those regulating elementary and secondary education, and separate from those regulating special education. (See, e.g., §§ 8530-8534, 46140.5; *Orange Unified School Dist. v. Rancho Santiago Community College Dist.* (1997) 54 Cal.App.4th 750.) Adult education is mentioned in IDEA and related statutes only as one of the destinations, along with college and employment, that must be considered in drafting a transition plan. (34 C.F.R. § 300.43(a)(1)(2006); Ed. Code, §§ 56043, subd. (g), 56345.1, subd. (a)(1).) IDEA and related laws define responsible state and local educational agencies, *inter alia*, as agencies having administrative control and direction over a public elementary school or secondary school. (20 U.S.C. §§ 1401(5), (19), (32); 34 C.F.R. §§ 300.28(a), (b)(2), 300.41 (2006); Cal. Code Regs., tit. 5, § 3000, subd. (t).) In its capacity as a contract provider of adult education in the Jail, Hacienda does not assert control or direction over a public elementary or secondary school.

Student's interpretation of the contract would only be defensible if some statute, regulation, or doctrine provided that, notwithstanding the express terms of the contract, a district that contracts to provide adult education in a facility containing some adults eligible for special education must take responsibility for that special education. No such authority exists, and it would not be necessary here, since section 56041 places responsibility for an eligible inmate's special education elsewhere.

Student's enrollment in the adult education program operated by Hacienda in the Jail is voluntary, as he is no longer subject to the compulsory attendance law. Student does not allege that he has enrolled, or attempted to enroll, in that program. The complaint alleges that he has no school of attendance. Even if Student were correct that Hacienda would be obligated to provide him a FAPE as part of that program, his failure to enroll in it would make any obligation of Hacienda irrelevant.

Student's complaint alleges no connection with Hacienda other than through the contract. It does not allege that he resides within Hacienda's boundaries, or that Hacienda has been involved in any decisions regarding him within the meaning of Section 56501, subdivision (a). Hacienda is, therefore, not a proper party to this matter, and is dismissed.

California Department of Education

A local educational agency (LEA) is generally responsible for providing a FAPE to students with disabilities residing within its jurisdictional boundaries. (§ 48200.) The responsibility to identify children with disabilities, to assess in all areas of suspected disability, to determine appropriate educational placements and related services through the IEP process, and to provide needed special education and related services is placed on an LEA. (§§ 48200; 56300; 56302; 56340; 56344, subd. (c).) An LEA is "a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area." (§ 56026.3.) CDE is a state educational agency (SEA), not an LEA, because it is "primarily responsible for the State supervision of public elementary schools and secondary schools" (20 U.S.C. § 1401(32).)

CDE is a proper party to a due process proceeding when it provides direct special education services, as it does in the state's specialized schools for the deaf or blind. (See, e.g., *Student v. Montebello Unified School Dist., et al.* (Jan. 21, 2009) OAH Case No. 2008090354 (Order Granting Motion to Dismiss); *Student v. Fremont Unified School Dist., et al.* (2002) SEHO Case No. SN02-02368; *Minarets Joint Union High School Dist. v. Student, et al.* (1997) SEHO Case No. SN1220-97/SN1301-97.) CDE may also be responsible for providing an individual student a FAPE when California law fails to designate any responsible entity. (*Orange County Dep't of Educ. v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1170.) However, that rule is inapplicable here, because section 56041 identifies a responsible entity.

In its capacity as the SEA responsible for the administration of special education law in California, CDE is not "involved in any decisions regarding a pupil" within the meaning of section 56501, subdivision (a). There is no *respondeat superior* liability in an SEA for every failure of an LEA to comply with IDEA or state law. (*Beard v. Teska* (10th Cir. 1994) 31 F.3d 942, 953-954; *Carnwath v. Grasmick* (D.Md. 2000) 115 F.Supp.2d 577, 582 ["Plaintiffs must show ... that the SEA was directly involved and responsible for the denial of FAPE"]; *Student v. Montebello Unified School Dist., supra*, OAH Case No. 2008090354.)

In 2007, the Legislature amended the definition in section 56501, subdivision (a), of a proper party to a special education due process proceeding by removing the word "educational" from the previous phrase "public educational agency," so now the statute authorizes joinder of a "public agency," not just a "public educational agency." (Stats. 2007, ch. 56, § 83.) Student argues that this amendment makes obsolete all previous decisions concerning CDE's liability in a due process proceeding. However, the amendment does not help Student here. A public agency under the IDEA is one that is "responsible for providing education to children with disabilities." (34 C.F.R. § 300.33 (2006).) And a public agency subject to joinder under section 56501, subdivision (a) must be "providing special education or related services to individuals with exceptional needs" and must be involved in decisions regarding the pupil (§§ 56028.5, 56500; 56501, subd. (a).)

Since Student does not allege that CDE is providing special education or related services to individual students or was involved in any decisions regarding him, CDE is not a proper party to this matter, and its motion to dismiss is granted.

LACOE and the County

Student joined both LACOE and the County, separately, as parties. LACOE is within the definition of LEA, but the County is not. (§ 56026.3.) Student argues that LACOE is responsible for Student's special education under section 56140, subdivision (a), which requires that a county board of education have a countywide plan that ensures that all individuals with exceptional needs residing within the county have access to appropriate special education programs and related services. However, Student does not allege that LACOE does not have such a plan, and the language of the section cannot be extended to require the direct provision of special education and related services to an individual student.

Student relies on various duties imposed by the Education Code on the superintendent of the county office of education (§ 1240), but none of those duties concerns the provision of a FAPE to an individual student. Student infers from these supervisory duties that LACOE is responsible for overseeing Hacienda's adult education program in the jail, and has failed to do so. His argument fails for the same reasons his argument concerning Hacienda fails: the contract between Hacienda and the Jail does not oblige Hacienda to provide special education.

Student also alleges that the County of Los Angeles has supervisory authority over Hacienda's program in the jail, and that allegation fails for the same reason.

Since Student does not allege that LACOE or the County was involved in any decisions regarding him, those entities are not proper parties to this matter, and their motions to dismiss are granted.

The Puente Hills and Southwest SELPAs

A special education local plan area (SELPA) administers local plans pursuant to section 56205 et seq., and administers the allocation of funds to districts and county boards of education. (§§ 56195, 56836 et seq.) A SELPA's local plan must include: (1) establishment of a system for determining the responsibility of participating agencies for the education of each individual with exceptional needs residing in the geographical area served by the plan; and (2) designation of the county office, a responsible local agency, or any other administrative entity to perform functions such as the receipt and distribution of funds, provision of administrative support, and coordination of the implementation of the plan. (§ 56195.1, subd. (c).) SELPAs usually do not directly deliver special education and related services to individual students.

Hacienda is part of Puente Hills, and Student argues that Puente Hills is therefore responsible for overseeing Hacienda's contract with the Jail, and has failed to do so. However, as shown above, that contract does not involve special education and creates no obligation to Student. Moreover, an uncontested declaration by Puente Hills' Director establishes that Puente Hills neither provides any direct special education and related services to individual students, nor has anything to do with the implementation or oversight of the contract. Student does not allege any other connection to Puente Hills.

Student alleges that Southwest oversees LACOE's compliance with special education laws. However, as shown above, LACOE is not an agency involved in decisions regarding Student, and is not a proper party. Thus, Southwest has no apparent duty here.

Since Student does not allege that Puente Hills or Southwest was involved in any decisions regarding him, those entities are not proper parties to this matter, and their motions to dismiss are granted.

The Sheriff and his Department

Student alleges that the Sheriff and the Sheriff's Department have responsibility of providing and overseeing inmate education in the Jail. However, Student's case against the Sheriff and the Department fails for the same reason that his case against Hacienda fails: the adult education provided by contract in the Jail does not include special education.

Student alleges, as he does with all the parties he named, that the Sheriff and the Department are necessary parties if he is to be afforded complete relief. However, nearly all the relief he seeks involves systemic change and is premised upon success in his class action. The relief OAH can grant is limited to remedies regarding the denial of a FAPE to an individual student. (§ 56505(f), (g), and (i).)

Neither the Sheriff nor his Department is an LEA. (§ 56026.3.) Neither is a public agency involved in any decisions regarding Student. Accordingly, Student's motion to

restore the Sheriff and the Department as parties, and Hacienda's motion to restore the Department as a party, are denied.

Motion to strike and for sanctions

On January 2, 2009, LACOE and Southwest filed a pleading entitled "Notice of Insufficiency, Motion to Dismiss, and Response to Petitioner's Request for Due Process Hearing." On January 27, 2009, LACOE and Southwest moved to be dismissed as parties.

On January 30, 2009, Student moved to strike the motions of LACOE and Southwest to be dismissed as parties, and moved for sanctions, on the ground that the January 27 filings duplicated the motion to dismiss filed January 2, 2009, and were therefore frivolous and designed to harass Student and cause unnecessary delay. However, there are significant differences between the earlier and later pleadings. The earlier motion to dismiss sought dismissal of the whole complaint, and argued primarily that OAH has no jurisdiction over a request for due process hearing filed on behalf of more than one student, or on behalf of unnamed students. The latter motions argued only that LACOE and Southwest were not proper parties because they were not agencies involved in decisions involving Student.

The January 2 and January 27, 2009, motions by LACOE and Southwest were sufficiently different that the later-filed motions were not frivolous or made solely for the purpose of causing unnecessary delay. (Cal. Code Regs., tit. 1, § 1040, subd. (a).) The motions to strike and for sanctions are denied.

Dismissal of complaint

This Order dismisses from the matter every named party except Student, leaving no party from whom relief can be obtained. The complaint is therefore dismissed without prejudice to the filing of a complaint naming proper parties.

ORDER

1. The motion by the California Department of Education to be dismissed as a party is granted.
2. The motion by the Hacienda La Puente Unified School District to be dismissed as a party is granted.
3. The motions by the Los Angeles County Office of Education and the County of Los Angeles to be dismissed as parties are granted.
4. The motion by the Puente Hills SELPA to be dismissed as a party is granted.
5. The motion by the Southwest SELPA to be dismissed as a party is granted.

6. Student's motion to restore the Sheriff and the Department as parties, and Hacienda's motion to restore the Department as a party, are denied.

7. The complaint is dismissed.

Dated: February 9, 2009

/s/

CHARLES MARSON Administrative Law Judge Office of Administrative Hearings
