

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

TWIN RIVERS UNIFIED SCHOOL DISTRICT, SACRAMENTO COUNTY MENTAL HEALTH, CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND MT. DIABLO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009050920

ORDER DENYING MOUNT DIABLO UNIFIED SCHOOL DISTRICT'S MOTION TO DISMISS

On May 21, 2009, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Twin Rivers Unified School District (TRUSD), Sacramento County Mental Health, California Department of Education (CDE), California Department of Mental Health, Sacramento County Probation Department (SCPD), Sacramento City Unified School District (SCUSD), and Mt. Diablo Unified School District (MDUSD). On June 10, 2009, OAH issued orders dismissing SCPD and SCUSD as parties.

On June 17, 2009, MDUSD filed a motion to be dismissed as a party. On June 18, 2009, MDUSD filed supplemental exhibit "1" to its motion. On June 19, 2009, Student filed a response in opposition to MDUSD's motion to be dismissed as a party. On June 21, 2009, TRUSD also filed a response opposing MDUSD's motion.

APPLICABLE LAW

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 section 56028 sets forth definitions of "parent." Section 56028 defines "parent" to include the following:

- (3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, including a responsible adult appointed for the child in

accordance with Sections 361 and 726 of the Welfare and Institutions Code.

In addition, the district of residence responsible for providing special education and related services to pupils between the ages of 18 to 22 years, inclusive, and for conserved pupils, is the district of residence of the conservator. (Ed. Code, § 56041.)

DISCUSSION

Student alleges in her complaint that MDUSD denied Student a free appropriate public education from April 28, 2009, through the 2009-2010 school year. Student also alleges that on December 12, 2008, that the Sacramento County Juvenile Court terminated Student's mother's education rights and appointed Student's grandmother as Student's responsible adult to make educational decisions for Student pursuant to Welfare and Institutions Code section 726. Student alleges in her complaint that her grandmother lives within the boundaries of MDUSD. In addition, Student turned 18 years old on June 18, 2009, and alleges that she assigned her educational rights to her grandmother. MDUSD concedes in its pleading that MDUSD attended Student's IEP on May 7, 2009, although it alleges that MDUSD's attendance was for informational purposes only.

Based on the authority cited above, and on the pleadings of the parties, there is, at a minimum, a dispute as to whether MDUSD is Student's responsible LEA. Therefore, Student has established that MDUSD is a proper party in this matter.

ORDER

MDUSD's Motion to Dismiss is denied. The matter will proceed as scheduled.

Dated: June 25, 2009

/s/

RALPH VENTURINO
Administrative Law Judge
Office of Administrative Hearings