

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ALHAMBRA SCHOOL DISTRICT.

OAH CASE NO. 2009060365

ORDER GRANTING MOTION TO
DISMISS FOR LACK OF
JURISDICTION

On June 08, 2009, Parent filed a due process hearing request (complaint) on behalf of on behalf of Student with the Office of Administrative Hearings (OAH) naming Alhambra Unified School District (District) as the respondent.

On July 23, 2009 District filed a motion for continuance of the hearing date of August 4, 2009 on the grounds that (1) District witnesses were unavailable for testimony; (2) District provided an Assessment Plan to Parent of Student in June, 2009 and Parent has not responded; and (3) Parent had agreed to a continuance and later withdrew agreement to the continuance. The parties also did not attend the originally scheduled mediation date of July 14, 2009, because of District's unavailability.

On July 27, 2009, a telephonic PHC was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings, and (OAH). Parents appeared on behalf of Student. Cyndi Dalton, Attorney at Law, appeared on behalf of District. OAH issued an order following the PHC continuing the Mediation to September 3, 2009 at 9:00 a.m. at 1515 West Mission Road Alhambra, CA 91803. The telephonic PHC was continued to September 9, 2009 at 10:00 a.m., and the Due Process Hearing was continued on joint motion of the parties to September 14-17, and September 21, 2009, at 9:30a.m, at 1515 West Mission Road Alhambra, CA 91803.

On September 8, 2009, District filed a Motion to Dismiss Student's Complaint for Lack of Jurisdiction because Student no longer resides within the jurisdictional boundaries of the District. District contends that Student has moved out of the district and attempts to contact Student and Parent by telephone have been unsuccessful as all of the contact numbers previously provided by Parent are disconnected or unable to receive calls. District further contends that its counsel attempted to effect personal service of District's Amended Prehearing Conference Statement and its Motion to Dismiss at Student's last address of record and was informed by another individual at the residence that the house was sold and that Student and his parent no longer resided there.

On September 9, 2009, a telephonic PHC was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Cyndi Dalton, Attorney at Law, appeared on behalf of District. Parent did not appear on behalf of Student. At the time of the PHC the ALJ and OAH staff in Sacramento was unsuccessful in making telephone contact with Parent. The ALJ ordered District to file a declaration establishing District's attempts at personal service of Student and Parent.

The ALJ issued an order continuing the telephonic PHC to Monday, September 14, 2009 at 9:30 a.m. Student was further ordered to file a response to District's motion to dismiss on or before September 11, 2009, with OAH by facsimile transmission at (916) 376-6319. Parent was also required to immediately notify OAH of any change of address and provide a current operating telephone number at which Parent can be contacted for the PHC on Monday. The ALJ further ordered that the Due Process hearing scheduled for September 14-17, and 21, 2009 would remain on calendar and would go dark on September 14, 2009 for a ruling on District's motion to dismiss. Student was admonished that failure to comply with the order may result in dismissal of the complaint. OAH received no response from Parent or Student.

On September 10, 2009, District filed the Declaration of Caroline Carter in which she stated that she attempted to personally serve District's Motion to Dismiss at Student's last address of record and was informed by an individual at that address that Parent and Student no longer lived there.

On September 14, 2009, the continued telephonic prehearing conference (PHC) was held before Administrative Law Judge (ALJ) Stella L. Owens-Murrell, Office of Administrative Hearings (OAH). Cyndi Dalton, Attorney at Law, appeared on behalf of District. Parent did not appear on behalf of Student. At the time of the PHC the ALJ was again unsuccessful in making telephone contact with Parent.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), 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.)

DISCUSSION

. The evidence establishes that Student is no longer residing at his last address of record within the jurisdictional boundaries of the Alhambra Unified School District. Moreover, Student has failed to provide any evidence to the contrary and has failed to provide information of his current address and telephone number. OAH lacks jurisdiction to determine the issues in Student's complaint. After considering District's motion, and the evidence in support thereof, the motion is granted and the due process complaint is dismissed.

ORDER

1. The District's Motion to Dismiss is granted.
2. The due process hearing dates are vacated and the complaint is dismissed.

IT IS SO ORDERED

Dated: September 16, 2009

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings