

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ORANGE COUNTY DEPARTMENT OF  
EDUCATION, SANTA ANA UNIFIED  
SCHOOL DISTRICT, NORTH ORANGE  
COUNTY SELPA AND ORANGE  
COUNTY HEALTH CARE AGENCY.

OAH CASE NO. 2009060423

ORDER DENYING THE DISTRICT'S  
MOTION TO DISMISS

On June 4, 2009, attorney Kathleen M. Loyer, on behalf of Student, filed a Due Process Hearing Request (complaint) against the Orange County Department of Education (OCDOE), Santa Ana Unified School District (District), North Orange County Special Education Local Plan Area (SELPA) and Orange County Health Care Agency (OCHCA). On June 15, 2009, the Office of Administrative Hearings (OAH) granted in part OCHCA's Notice of Insufficiency and granted Student 14 days to file an amended complaint. Student filed an amended complaint on June 17, 2009.

On June 26, 2009, attorney Sundee M. Johnson, on behalf of the District, filed a Motion to Dismiss. OAH received no response from Student.

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 & 56028.5.)

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

Student's amended complaint alleges four issues against the District. Student asserts that the District is a responsible local educational agency (LEA) because Student resides within the District's boundaries. According to the amended complaint, Student is presently eligible for special education services under the category of mental retardation. The issues involve the District's failure to identify Student as also being eligible for special education services under the category of emotionally disturbed and failing to address his mental health issues. Additionally, Student asserts that the District failed to address his speech and language, auditory processing and social-emotional deficits in his individualized educational programs.

The District asserts that it is not an appropriate party in this action because Student has not attended a District school since 2006 and that other public agencies are the responsible LEAs.

Based on the authority cited above, and on the pleadings of the parties, there is, at a minimum, a disputed fact and a triable issue for hearing as to whether the District is Student's responsible LEA. (See *Orange County Department of Education v. Student* (2009) Cal.Ofc.Admin.Hrngs. Case Nos. 2008120021 and 2009020130.) Therefore, Student has established that the District may be a proper party in this matter.

## ORDER

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

Dated: July 13, 2009

/s/

---

PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings