

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT, LOS ANGELES COUNTY OFFICE OF EDUCATION, LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH AND CALIFORNIA DEPARTMENT OF EDUCATION.

OAH CASE NO. 2009100939

ORDER DENYING LOS ANGELES UNIFIED SCHOOL DISTRICT'S MOTION TO DISMISS

On October 13, 2009, attorney Patricia E. Cromer, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Los Angeles County Office of Education (LACOE), Los Angeles Unified School District (LAUSD), Los Angeles County Department of Mental Health (LACDMH) and California Department of Education (CDE). On November 2, 2009, attorney Mampre R. Pomakian, on behalf of LAUSD, filed a motion to dismiss because LAUSD is not the responsible local educational agency (LEA) for Student. On November 6, 2009, Student filed a response.

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 and 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 Individuals with Disabilities Education Act 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, which is found in the section of the code regarding special education, sets forth definitions of “parent” that must be read in conjunction with section 48200 when there is a question regarding which agency is responsible for providing special education to a particular child. Section 56028 provides:

(a) “Parent” means any of the following:(1) A biological or adoptive parent of a child.

(2) A foster parent if the authority of the biological or adoptive parents to make educational decisions on the child's behalf specifically has been limited by court order in accordance with Section 300.30(b)(1) or (2) of Title 34 of the Code of Federal Regulations.

(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.

(4) An individual acting in the place of a biological or adoptive parent, including a grandparent, stepparent, or other relative, with whom the child lives, or an individual who is legally responsible for the child's welfare.

(5) A surrogate parent who has been appointed pursuant to Section 7579.5 or 7579.6 of the Government Code, and in accordance with Section 300.519 of Title 34 of the Code of Federal Regulations and Section 1439(a)(5) of Title 20 of the United States Code.

(b)(1) Except as provided in paragraph (2), the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under subdivision (a) to act as a parent, shall be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (1) to (4), inclusive, of subdivision (a) to act as the “parent” of a child or to make educational decisions on behalf of a child, then that person or persons shall be determined to be the “parent” for purposes of this part, Article 1 (commencing with Section 48200) of Chapter 2 of Part 27 of Division 4 of Title 2, and Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and Sections 361 and 726 of the Welfare and Institutions Code.

(c) “Parent” does not include the state or any political subdivision of government.

(d) “Parent” does not include a nonpublic, nonsectarian school or agency under contract with a local educational agency for the provision of special education or designated instruction and services for a child.

Children who have adjudicated by the juvenile court for placement in a juvenile hall are entitled to a FAPE. (Ed. Code, § 56150.) Juvenile court schools provide educational services to all students “detained”, e.g., in juvenile halls. (Ed. Code, § 48645.1) Regardless of where the parents or legal guardians of such children reside, the responsibility for providing a FAPE to any student who is “detained” in juvenile hall rests with the local county board of education. Education Code section 48645.2 states that:

The county board of education shall provide for the administration and operation of juvenile court schools established pursuant to Section 48645.1:

(a) By the county superintendent of schools, provided that, in any county in which the board of supervisors is establishing or maintaining juvenile court schools on January 1, 1978, the county superintendent of schools may contract with the board of supervisors for the administration and operation of such schools if agreed upon between the board of education and the board of supervisors. In any event, the county superintendent of schools may contract with other educational agencies for supporting services to the same extent that school districts may contract with other such agencies.

(b) By contract with the respective governing boards of the elementary, high school, or unified school district in which the juvenile court school is located.

Welfare and Institutions Code section 727, subdivision (a), provides that a juvenile court has the authority:

[t]o facilitate coordination and cooperation among governmental agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. However, no governmental agency shall be joined as a party in a juvenile court proceeding in which a minor has been ordered committed to the Department of the Youth Authority. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services.

DISCUSSION

Student is presently detained in Los Angeles County Juvenile Hall, and a ward of the juvenile court. LACOE appointed an educational surrogate parent, who resides within the boundaries of LAUSD. According to the complaint, LACOE and LACDMH held an individualized educational program (IEP) meeting on September 28, 2009, and the surrogate parent agreed to LACOE's and LACDMH's offer of a placement at a residential treatment center. Subsequently, LACOE purportedly informed the surrogate parent that LAUSD, not LACOE, was responsible for implementing the September 28, 2009 IEP, and Student is still detained at juvenile hall because LACOE and LAUSD refuse to implement the IEP. LAUSD asserts that it is not the responsible LEA to implement the September 28, 2009 IEP because it was not involved in the development of the IEP, and that LACOE is the responsible LEA because Student is still detained at Los Angeles County Juvenile Hall.

In this case, a triable issue for hearing exists whether LACOE or LAUSD is the responsible LEA for implementing Student's September 28, 2009 IEP because Student will no longer be detained at juvenile hall once he leaves juvenile hall to enter the residential treatment facility. (See *Orange County Department of Education v. Student* (2009) Cal.Ofc.Admin.Hrngs. Case Nos. 2008120021 and 2009020130.) Therefore, LAUSD's motion to dismiss is denied.

ORDER

LAUSD's motion to dismiss is denied.

Dated: November 18, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings