

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RED BLUFF UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010040284

ORDER GRANTING MOTION TO
DISMISS TEHAMA COUNTY
DEPARTMENT OF EDUCATION

On May 6, 2010, Tehama County Department of Education (County) filed a motion to be dismissed from the due process hearing request on the ground that it was not a proper party. In support of the motion, County provided evidence that although it provided related services to Student through a SELPA, it was not the local educational agency (LEA) involved in making educational decisions about Student. The evidence consisted of declarations and the Tehama County SELPA Local Plan. On May 11, 2010, Student filed an opposition in which Student contended that the facts of the due process hearing request should be taken as true for purposes of a motion to dismiss. Student provided no facts to refute County's evidence that it was not the LEA responsible for making educational decisions about Student, and instead, conceded that Student resided with her parents in a local district. On May 12, 2010, County filed a reply. As discussed below, County's motion will be granted.

Although special education law does not provide a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), and easily provable. Here, the sole issue is whether County is a proper party, a matter easily proven without a formal summary judgment procedure.

In general, IDEA due process hearing procedures extend 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.) Thus, although a county office of education may fit the definition of "public agency" set forth in the IDEA, to be a proper party for a due process hearing the county office of education must also be involved in making decisions regarding a particular student. To determine whether County is a "public agency involved in any decisions regarding" Student requires a review of California statutes that define the role of county offices of education, SELPAs and school districts of residence.

Words of a statute should be construed in light of the statutory purpose and should also, to the extent possible, be interpreted in a way that is consistent with other statutes relating to the same subject. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, *supra*, 117 Cal.App.4th at p. 54, citing *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1387.) The Education Code and California Code of Regulations expressly state the principles of statutory construction that “the definitions prescribed by this article apply unless the context otherwise requires,” and, “words shall have their usual meaning unless the context or a definition of a word or phrase indicates a different meaning.” (Ed. Code, § 56020; Cal. Code. Regs., tit. 2, § 60010, subd. (a).)

Education Code section 56140 sets forth the role of county offices of education and provides, in its entirety:

County offices shall do all of the following:

(a) Initiate and submit to the superintendent a countywide plan for special education which demonstrates the coordination of all local plans submitted pursuant to Section 56205 and which ensures that all individuals with exceptional needs residing within the county, including those enrolled in alternative education programs, including, but not limited to, alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, will have access to appropriate special education programs and related services. However, a county office shall not be required to submit a countywide plan when all the districts within the county elect to submit a single local plan.

(b) Within 45 days, approve or disapprove any proposed local plan submitted by a district or group of districts within the county or counties. Approval shall be based on the capacity of the district or districts to ensure that special education programs and services are provided to all individuals with exceptional needs.

(1) If approved, the county office shall submit the plan with comments and recommendations to the superintendent.

(2) If disapproved, the county office shall return the plan with comments and recommendations to the district. This district may immediately appeal to the superintendent to overrule the county office's disapproval. The superintendent shall make a decision on an appeal within 30 days of receipt of the appeal.

(3) A local plan may not be implemented without approval of the plan by the county office or a decision by the superintendent to overrule the disapproval of the county office.

(c) Participate in the state onsite review of the district's implementation of an approved local plan.

(d) Join with districts in the county which elect to submit a plan or plans pursuant to subdivision (c) of Section 56195.1. Any plan may include more than one county, and districts located in more than one county. Nothing in this subdivision shall be construed to limit the authority of a county office to enter into other agreements with

these districts and other districts to provide services relating to the education of individuals with exceptional needs.

(e) For each special education local plan area located within the jurisdiction of the county office of education that has submitted a revised local plan pursuant to Section 56836.03, the county office shall comply with Section 48850, as it relates to individuals with exceptional needs, by making available to agencies that place children in licensed children's institutions a copy of the annual service plan adopted pursuant to paragraph (2) of subdivision (b) of Section 56205.

Nothing in Education Code section 56140, renders a county office of education individually responsible to provide FAPE to, or make education decisions about, a particular student. The duty to coordinate SELPAs or provide services to SELPA members is not a duty to provide FAPE to individual students or make educational decisions. Because Education Code section 56140, does not render county offices of education responsible for providing FAPE to individual students, analysis of other statutes regarding residency is required.

In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in sections 48200 and 48204. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57 (interpreting Ed. Code, §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located).) Under Education Code section 48200, children between the ages of 6 and 18 must attend school in the district “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.)

As part of California’s general statutory scheme of determining which school district is responsible for education based on parental residency, Education Code section 48204 includes exceptions for situations other than a child living with a “parent or legal guardian.” (See *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, *supra*, 117 Cal.App.4th at pp. 57-58.) Education Code section 48204, provides that agencies other than the school district where the “parent or legal guardian” resides are responsible to provide education under the following circumstances: 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; 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; 4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district; and 5) A pupil residing in a state hospital located within the boundaries of that school district. (Ed. Code, § 48204.)

Here, Student concedes, as she must, that she was a resident of a local school district who was attending Red Bluff Union Elementary School District on an interdistrict permit. Student was not placed in a licensed children’s institution or any other placement that would render the County directly responsible for providing Student a FAPE based on residency. Because Education Code section 56140 does not establish that County had an independent

duty to provide a FAPE to Student, and at all times Student was a resident of a local district, County was not the entity making educational decisions about Student as a matter of law. Thus, County is entitled to dismissal because it is not a proper party under Education Code section 56501, subdivision (a).

ORDER

Tehama County Department of Education is dismissed as a party.

Dated: May 19, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings