

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CABRILLO UNIFIED SCHOOL
DISTRICT AND CALIFORNIA VIRTUAL
ACADEMY.

OAH CASE NO. 2010090040

ORDER GRANTING MOTION TO
DISMISS

On August 30, 2010, Student filed a request for due process (complaint) naming Cabrillo Unified School District (District), Kaplan Academy of California-Los Angeles (Kaplan) and California Virtual Academy (CVA) as respondents.

On September 9, 2010, the District filed a motion to dismiss, which was opposed by Student. In that opposition, Student argued that Student resided within the District with his parents. OAH denied the District's motion.

On October 5, 2010, Kaplan Academy of California-Los Angeles (Kaplan) filed a motion to dismiss, indicating that (1) Student never enrolled at Kaplan; Student could not have been enrolled at Kaplan as enrollment is only available to students eligible for public education in Los Angeles, Kern, Orange, San Bernardino, and Ventura counties; and (3) Student could not have incurred expenses at Kaplan, as Student did not attend Kaplan, and Kaplan is a tuition-free school.

On October 11, 2010, Student filed an opposition to the motion to dismiss, contending that dismissal is not proper because there are issues of fact which require a determination by an ALJ.

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 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 contends that Kaplan's motion should be denied on the basis that there are issues of fact which should be adjudicated. Student, however, fails to address the undisputed facts that Student was not enrolled in Kaplan, and could not have been enrolled in Kaplan based upon his residency. Based upon Student's residency, and the declarations provided by Kaplan, no dispute of fact exists and therefore Kaplan Academy of California – Los Angeles is dismissed from this complaint.

ORDER

Kaplan Academy of California's Motion to Dismiss is granted. Kaplan Academy of California-Los Angeles is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

Dated: October 18, 2010

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings