

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIANS ON BEHALF OF STUDENT,

v.

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

OAH CASE NO. 2010101205

ORDER GRANTING MONROVIA
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On October 25, 2010, Student filed a Request for Due Process Hearing (complaint) against the Monrovia Unified School District (MUSD), Los Angeles County Office of Education (LACOE), Los Angeles County Department of Mental Health (LACDMH) and California Department of Education (CDE). On November 4, 2010, MUSD filed a Motion to Dismiss, alleging that it is not a proper party to this action on the grounds that Student does not allege that MUSD denied a free appropriate public education (FAPE) because MUSD was not involved in the October 6, 2010 individualized education program (IEP) meeting, the recommendation for a residential placement and the dispute regarding this placement's funding.¹ On November 12, 2010, the Office of Administrative Hearings (OAH) received LACOE's opposition to the Motion to Dismiss, but has not received a response from Student, LACDMH or CDE.

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.)

¹ LACOE filed its own Motion to Dismiss, which will be ruled upon in a separate order.

Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) When a residential placement is recommended by an IEP team, the local education agency, such as a county office of education, is financially responsible for transportation to and from the residential placement and all special education instruction and non-mental-health related services. (Cal. Code Regs., tit. 2, §§ 60010, subd. (k) [including county offices of education within the definition of local educational agency (LEA)], 60110, subd. (b)(2) [for residential placements, “[t]he LEA shall be responsible for providing or arranging for the special education and non-mental-health related services needed by the pupil”], & 60200, subd. (d).)

Under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.), the state educational agency (SEA) has the responsibility for the general supervision and implementation of the Act. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006)².) This responsibility includes ensuring that a FAPE is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a).) In the rare instance when state law does not provide for a responsible LEA or public agency, then the duty to provide a FAPE falls upon the SEA. (*Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 952-953; *Orange County Dept. of Education v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1169-1170.)

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education” 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.)

Interagency due process hearing requests in which one agency names another as a respondent are outside of the jurisdiction of IDEA hearings. (Gov. Code, § 7586, subd. (d))

² All subsequent references to the Code of Federal Regulations are to the 2006 version.

[no state or local public agency may request a due process hearing against another public agency].) However, IDEA hearings brought by a student against a public agency properly include determinations of residency for purposes of identifying the public agency responsible for providing special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.) However, OAH cannot write advisory opinions based on speculation as to what might occur. OAH's jurisdiction is limited to an examination of the time frame plead in the Due Process Request and as established by the evidence at the hearing.

OAH can address which public agency has the responsibility to provide Student with a FAPE as established by the evidence at the hearing. (See *Orange County Dept. of Ed. v. Student* (2009) Cal.Offc.Admin.Hrngs., Case Nos. 2009010078/2009010529 (2009); *Student v. Orange County Dept. of Ed.* (2009) Cal.Offc.Admin.Hrngs., Case Nos. 2009090943/2009100565; *Orange County Dept. of Ed. v. Student* (2009) Cal.Offc.Admin.Hrngs., Case Nos. 2008120021/2009020130; and *Student v. Hemet Unified Sch. Dist. Orange County Dept. of Ed.* (2006) Cal.Offc.Admin.Hrngs., Case No. 2006100472.) However, OAH, like other administrative and judicial bodies, cannot give advisory opinions regarding future events. Thus, to the extent Student is seeking a determination about which agency is responsible for his education in the future, the OAH decisions cited above are not applicable.

DISCUSSION

MUSD's Motion to Dismiss centers on the fact that it was not involved in and had no responsibility for the October 6, 2010 IEP in which Guardians, LACOE and LACDMH agreed to Student's residential placement. Additionally, MUSD asserts that it is not presently responsible for funding this placement because Student still resides at juvenile hall and is LACOE's responsibility. In this case, Guardians, LACOE and LACDMH agreed on October 6, 2010, for a residential placement for Student. LACDMH subsequently informed Guardians and LACOE that it could not fund its portion of Student's residential placement due to the Governor's veto of state funding to county mental health agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq. LACOE contends MUSD is a necessary party to this action because MUSD will be the responsible educational agency, not LACOE, for funding the educational portion of Student's residential placement after Student's placement at the residential facility.

While Student continues to reside in juvenile hall, LACOE is responsible for her education, including meeting her mental health needs and the provision of a residential placement if needed for Student to receive a FAPE. (*Student v. Los Angeles County Ofc. of Ed.* (2010) Cal.Offc.Admin.Hrngs., Case No. 2010040889; *Student v. Los Angeles County Ofc. of Ed.* (2010) Cal.Offc.Admin.Hrngs., Case No. 2010040050; and *Student v. Los Angeles Unified Sch. Dist., Los Angeles County Ofc. of Ed., Los Angeles County Dept. of Mental Health, and Cal. Dept. of Ed.* (2010) Cal.Offc.Admin.Hrngs., Case No. 2009100939.) In each of these recent decisions, LACOE attempted to shift the present responsibility to

fund Student's placement, including transportation costs, to a school district where student attended before entering juvenile hall or the school district where student's parent or guardian presently resided. All three decisions held that LACOE was the responsible educational agency, and not another school district, while student resided in juvenile hall. OAH could not decide whether LACOE or another school district would be responsible after student's placement at the residential facility because those facts were not before OAH.

The above three decisions are applicable to this instant case as Student still resides in juvenile hall and the issue before OAH is the obligation to provide FAPE, including the responsibility to implement Student's October 6, 2010 IEP. OAH cannot speculate on the educational agencies' responsibility after Student leaves juvenile hall and attends the new placement. The question of whether LACOE or MUSD is ultimately responsible for Student's residential placement can only be determined once the Student has been released. Therefore, MUSD's Motion to Dismiss is granted because LACOE and not MUSD is a responsible educational agency while Student resides in juvenile hall.

ORDER

MUSD's Motion to Dismiss is granted. The caption in this case shall now be, *Guardians on behalf of Student, v. Los Angeles County Office of Education, Los Angeles County Department of Mental Health and California Department of Education.*

Dated: November 16, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings