

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2010110357

ORDER GRANTING DRY CREEK'S
MOTION TO DISMISS ISSUE THREE
OF STUDENT'S AMENDED
COMPLAINT

On November 27, 2010, Student filed an amended Request for Due Process Hearing (amended complaint) against San Juan Unified School District (SJUSD), Dry Creek School District (Dry Creek) and Center Unified School District (CUSD). The Office of Administrative Hearings (OAH) dismissed SJUSD as a party on December 8, 2010, and dismissed CUSD as a party on December 14, 2010. On December 3, 2010, Dry Creek filed a motion to dismiss issue three of Student's amended complaint. Student has not filed an opposition or otherwise responded to Dry Creek's motion.

FACTUAL DISCUSSION

In his complaint, Student explains that he previously resided in the boundaries of CUSD. Student is deaf. Since CUSD did not have an appropriate pre-school program for him, it arranged for Student to attend a preschool program in the SJUSD. At the end of October, 2010, Student moved within the boundaries of Dry Creek. On approximately October 28, 2010, Student requested an inter-district transfer from Dry Creek to CUSD. Dry Creek granted the request but CUSD did not. Student thereafter enrolled in Dry Creek. On approximately November 10, 2010, Dry Creek made him an offer of placement. Student has not accepted this offer

Issue three of Student's amended complaint alleges that Dry Creek denied him a free appropriate public education (FAPE) by approving the inter-district transfer for him but then refusing to pay the cost for transportation to the inter-district school. Dry Creek moves to dismiss this issue on the grounds that matters concerning inter-district transfers are beyond the jurisdiction of OAH.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), 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.)

Issues concerning inter-district transfers for students are not within the jurisdiction of OAH. Education Code, section 46600, et seq., describes the process for obtaining an inter-district transfer and for appealing a denial of the request. Pursuant to the Education Code, appeals addressing denials of a transfer are made to county offices of education, not to OAH. There is no statutory or regulatory authority that provides OAH with jurisdiction over issues concerning inter-district transfers. (See, *Student v. Fresno Unified School Dist.* (2009) Cal.Offc.Admin.Hrngs, Case No. 2008100696, at p. 4.)

To the extent that Student is alleging that Dry Creek’s offer of placement at a school located 21 miles from his home fails to provide him with a FAPE because the distance is too far for a child his age to travel on a bus, that issue is included in Student’s issue two. However, since OAH does not have jurisdiction of inter-district transfers, Student’s issue three is beyond the jurisdiction of OAH in a due process hearing.

ORDER

Dry Creek’s motion to dismiss issue three of Student’s amended complaint is granted. This matter shall proceed on the remaining issues in Student’s amended complaint. ¹

Dated: December 14, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

¹ OAH issued an Order denying Student’s motion for stay put on December 7, 2010.