

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SOUTH PASADENA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011030964

ORDER DENYING MOTION TO
DISMISS DISTRICT AS A PARTY
AND GRANTING MOTION TO
DISMISS ISSUES OUTSIDE THE
STATUTE OF LIMITATIONS

On March 15, 2011, Student filed a Due Process Hearing Request (complaint) naming the South Pasadena Unified School District (District). On April 12, 2011 District filed a Motion to be Dismissed as a Party, and Motion to Dismiss Issues and Response to Request for Due Process Hearing. Student filed an opposition to the motion.

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.)

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.)

The IDEA leaves it to the individual states to establish mechanisms for determining which agency within a state is financially responsible for the provision of special education

services, as well as procedures for reimbursement between agencies, and procedures for the resolution of interagency disputes. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) The requirement of establishing mechanisms for determining which agency within a state is financially responsible for the provision of special education services may be met through statutes, regulations, or interagency agreements. (20 U.S.C. § 1400(d)(12)(C).)

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

Notwithstanding the primary responsibility here of the last district of residence of Student’s parents, California law provides for certain responsibilities, including juvenile court schools, to be regionalized by local plans and administered, according to the local plan then in effect, by county offices of education. (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 *et seq.*)

IDEA hearings properly include declaratory relief actions regarding residency. (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.) Thus, in an IDEA hearing, OAH has jurisdiction to entertain declaratory relief actions regarding which agency is responsible for providing special education to a particular student.

Under the IDEA, state education agencies are responsible for “general supervision,” i.e., ensuring that: 1) IDEA requirements are met; 2) special education programs are supervised and meet the educational standards of the state education agency; and 3) the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, *et seq.*) are met as to homeless children. (20 U.S.C. § 1400(d)(11)(A).) A state education agency may be responsible for the provision of special education if it fails to meet its duty of ensuring that the requirements of the IDEA are met. (See *Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 953; *Kruelle v. New Castle County Sch. Dist.* (3d Cir. 1981) 642 F.2d 687, 696-697.)

The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the

problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

DISCUSSION

Student alleges in her complaint that she resides with her parents in the area served by District. Student also alleges that she has been enrolled in the District since September 1999. Student further alleges the following: (1) District failed to adequately assess her in areas of known and suspected need; (2) District did not offer a FAPE for the 2008-2009 to and including the 2010-2011 school years; (3) District violated Student's procedural rights under IDEA; and (4) Student's IEPs for the 2008-2009 to and including the 2010-2011 school years failed to accurately state present levels of performance and failed to provide measurable annual goals. Student proposes numerous resolutions requiring District to provide Student a FAPE.

Residence

District contends that it is not responsible for Student's education and services because Student has not attended school there since October 25, 2010. District further contends that Student was subsequently placed in a sheltered group home at an undisclosed location. District contends that Student ran away from home more than five months ago and has been in an out-of-district living arrangement which made LAUSD responsible for her IEP. District also contends that on February 28, 2011 notice was given by Gardena High School in Los Angeles that Student was enrolled there which placed Student outside District's jurisdiction. Finally, District contends that an order issued on February 15, 2011, by an LA County Juvenile Court Judge establishes that LAUSD is Student's current district of residence during the relevant period in this case.

Student contends that from October 29, 2010, Student became a runaway and resided in numerous locations, some with relatives, over a five month period until ordered by the Juvenile Court to attend school under the requirements of the McKinney-Vento Homeless Assistance Act. Student also contends that an attempt to enroll Student at Gardena High School while in temporary foster placement was unsuccessful because Student did not remain in the placement. Student has attempted to return to school in the District but District has refused to accept her. Pursuant to the declaration of Student's parent/guardian, they retained parental rights during the relevant period. Student asserts that the District of residence for the relevant period is South Pasadena School District because her parents reside in the district, parents have continued to receive notifications concerning Student from District, District convened an IEP team meeting on February 2, 2011 to discuss Student's educational program, and Student had not enrolled in any other district.

There is no dispute that Student's parents have resided in the District for the relevant periods. There is a dispute over the interpretation of the Juvenile Court Order concerning which district is responsible for providing Student a FAPE. Although OAH will dismiss matters that are facially outside its jurisdiction like civil rights claims, or section 504 claims,

special education due process hearings do not include a summary adjudication procedure. Applying the residency rules it is possible that District may be held responsible once the facts are established at hearing. District is a proper party to the complaint and District's motion to be dismissed is denied. District may raise its contentions as a factual defense at hearing.

Statute of Limitations

District contends that Student's complaint alleges FAPE violations for the 2008-2009 school year and that the statute of limitations bars issues prior to March 15, 2009. District further contends the complaint does not raise exceptions to the statute. Student contends that the complaint does not seek remedies beyond the two-year statute of limitations and the allegations pertaining to the 2008-2009 school year are not intended to seek relief for violations prior to March 15, 2009.

None of the allegations in the complaint pertaining to alleged FAPE violations for the 2008-2009 school year specify the period of time that Student alleges the violations occurred. Moreover, the complaint does not allege defenses to the bar of the statute of limitations. Accordingly to the extent Student seeks relief for alleged FAPE violations prior to March 15, 2009, those claims are barred by the statute of limitations. District's motion to bar those claims is granted.

ORDER

1. District's Motion to be Dismissed as a party is denied.
2. District's Motion to Dismiss claims outside the two-year statute of limitations is granted. The matter will proceed to hearing only on alleged failures to provide a FAPE after March 15, 2009 (two years prior to the date of filing).

Dated: April 21, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings