

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROCKLIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011050660

ORDER DENYING MOTION TO  
DISMISS

On May 16, 2011, Student's Father filed a due process hearing request (complaint) on behalf of Student, naming Rocklin Unified School District (District) as the respondent. On August 9, 2011, OAH granted District's motion to continue the due process hearing, good cause having been found. The telephonic prehearing conference (PHC) is scheduled for 10:00 a.m., September 19, 2011, and the due process hearing is set for September 27 through 29, 2011.

On August 26, 2011, attorney Jessi Carriger filed a Motion to Dismiss on behalf of District. OAH has received no response from Student to District's motion to dismiss.

BASIS FOR MOTION TO DISMISS

District provides three arguments in support of its request for dismissal. First, District contends it no longer has any special education obligations, which renders the Student's complaint moot, because Father has enrolled Student in a school district located in Washington State. Second, District contends the evidence indicates that Father has no intention of prosecuting the due process complaint. Third, District contends the due process should be dismissed as a sanction for contempt as a result of Father's most recent vulgar communication, which violated Administrative Law Judge (ALJ) Gary A. Geren's prior order.

APPLICABLE LAW

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.)

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.)

Generally, an ALJ has the authority to subject a person to the issuance of two types of sanctions: (1) contempt (Government Code sections 11455.10 and 11455.20); and (2) a shift of expenses from one party to another, when a party acts in bad faith. (Government Code section 11455.30). District does not seek a shifting of expenses but, instead, requests a dismissal as a sanction for Father’s contempt. Section 11455.20 reads:

(a) The presiding officer or agency head may certify the facts that justify the contempt sanction against a person to the superior court in and for the county where the proceeding is conducted.<sup>1</sup> The court shall thereupon issue an order directing the person to appear before the court at a specified time and place, and then and there to show cause why the person should not be punished for contempt. The order and a copy of the certified statement shall be served on the person. Upon service of the order and a copy of the certified statement, the court has jurisdiction of the matter.

(b) The same proceedings shall be had, the same penalties may be imposed, and the person charged may purge the contempt in the same way, as in the case of a person who has committed contempt in the trial of a civil action before a superior court.

The authority of an ALJ to subject one to contempt sanctions is modified for special education hearings. (Cal. Code of Regs., tit. 5, § 3088). Section 3088 states:

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<sup>1</sup> Government Code section 11405.80 states: “Presiding officer means the agency head, member of the agency head, administrative law judge, hearing officer, or other person who presides in an adjudicative proceeding.” (Emphasis added). This section makes clear that an ALJ who presides in an adjudicative proceeding is the “presiding officer,” a point confirmed in *Jonathon Andrew Wyner v. Manhattan Beach Unified School District, et. al.* (2000) 223 F.3d 1026, 1029, where the court stated, “Clearly, § 3088 allows a hearing officer to control the proceedings, similar to a trial judge.”

- (a) Provisions for contempt sanctions, order to show cause, and expenses contained in *Government Code sections 11455.10-11455.30* of the Administrative Procedure Act apply to special education due process hearing procedures except as modified by (b) through (e) of this section.
- (b) Only the presiding hearing officers may initiate contempt sanctions and/or place expenses at issue.
- (c) Prior to initiating contempt sanctions with the court, the presiding hearing officer shall obtain approval from the General Counsel of the California Department of Education.
- (d) The failure to initiate contempt sanctions and/or impose expenses is not appealable.
- (e) The presiding hearing officer may, with approval from the General Counsel of the California Department of Education, order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including costs of personnel, to the California Special Education Hearing Office for the reasons set forth in *Government Code section 11455.30(a)*. (Emphasis added).

#### ANALYSIS

Though the evidence indicates that Student no longer lives within the District's boundaries, the complaint is not rendered moot. The complaint seeks compensatory services and funds for District's alleged failure to provide a FAPE when Student was attending District schools. Students often file due process complaints against school districts which previously provided services, such that a change in residency does not deny a student standing. Therefore, the change in residency does not render the complaint moot and is not a basis for dismissal.

District has provided declarations regarding Student's residency, which arguably indicate that Father does not intend to prosecute the complaint at hearing. Also, District's counsel wrote Father, requesting confirmation of Student's enrollment in another District and asking for dismissal of this complaint. Father quickly responded by e-mail, with a vulgar retort, which certainly can be read as a strong indication that he does not intend on proceeding to hearing. Also, Father has not filed a response to this motion to dismiss.

However, the evidence is primarily hearsay and requires conjecture to support District's contentions. Disinterest in the proceeding is not, in itself, sufficient reason to dismiss the due process hearing. Student's rights are paramount, even though a parent's conduct may be uncivil and frustrating. Because it is Student's rights that are primarily at issue, it would be unfair to Student to dismiss at this time.

District requests that the due process be dismissed as a sanction for Father's contempt. On May 17, 2011, ALJ Geren ordered Father to conduct himself in a civil and

professional manner with District's counsel, having found Father's behavior inappropriate. Father's recent vulgar e-mail response was contrary to ALJ Geren's order. However, the applicable Code and Regulations sections limit the ALJ's authority to certifying the facts that justify the contempt sanction to the local superior court and, further, only with the approval from the General Counsel of the California Department of Education. (Gov. Code, §11455.20(a); 5 Cal. Code of Regs., title 5, § 3088(c).) Therefore, District's request for a dismissal order, as a result of Father's contemptuous conduct, is beyond an ALJ's authority.

The motion to dismiss is denied in its entirety. The matter shall proceed to the scheduled telephonic PHC. If Father does not participate, the ALJ may then issue an order to show cause (OSC) as to why the matter should not be dismissed for failure to prosecute. Dismissal would be proper after Student is given notice and an opportunity to be heard on the record.

#### ORDER

1. District's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.

Dated: September 06, 2011

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings