

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDERS ON
BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL
DISTRICT, ALHAMBRA UNIFIED
SCHOOL DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2011060785

ORDER DENYING ALHAMBRA
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

BACKGROUND

On June 15, 2011, Student, through her educational rights holders, filed a request for due process (complaint) naming the Bellflower Unified School District (Bellflower), the Alhambra Unified School District (Alhambra), and the Los Angeles County Office of Education (LACOE). The sole issue raised by Student in her complaint is which of the named local educational agencies is responsible for providing Student with the residential treatment center placement recommended in her May 3, 2011 individualized education program (IEP)?

On June 29, 2011, Bellflower filed a motion to dismiss it as a party, asserting that it was not responsible for providing Student with special education services because Student was not a resident of Bellflower when her IEP was developed. On July 8, 2011, OAH denied Bellflower's motion based on Student's adoptive parents residing within Bellflower's boundaries, and resolution of the residency issue would depend on a review of evidence and beyond the scope of a motion to dismiss.

On August 1, 2011, LACOE filed a motion to dismiss it as a party. LACOE contended that it was no longer the responsible educational agency to provide Student with special education and related services under her IEP, because Student had been released from juvenile hall and was no longer attending a LACOE program. LACOE then contended that as of July 18, 2011, when it transported Student to Devereaux via West Adolescent Services it would no longer be responsible for providing Student a FAPE and that it therefore was not a proper party to this action. Student did not file an opposition to LACOE's motion. However, on August 5, 2011, Bellflower filed an opposition to LACOE's motion to dismiss. Bellflower asserted that LACOE was a proper party because at the time the complaint was filed Student resided in Central Juvenile Hall and LACOE made the placement decisions

related to Student for all relevant periods in the complaint. On August 12, 2011, OAH denied LACOE's motion on grounds that (1) special education law does not provide for a summary judgment procedure; and (2) there is a factual dispute as to which local education agency (LEA) is responsible for funding Student's placement at a residential treatment facility.

For the following reasons, Alhambra's motion to dismiss is denied.

DISCUSSION

The background facts in Student's complaint state that Student's adoptive parents currently live within Bellflower's boundaries. Student states that she was homeschooled from August 2009 to January 2010. She then states that in February 2010, she was placed at Maryvale Group Home (Maryvale), which is located in the Alhambra Unified School District, and that Student attended school at various placements in Alhambra through May 13, 2011. Student contends that at an IEP meeting held May 3, 2011 by Alhambra, her IEP team determined that she required an out-of-state residential placement. Student then states that she was detained at juvenile hall in Los Angeles County on May 13, 2011, and continued to reside there as of the time she filed her complaint. A Psychoeducational Evaluation dated May 27, 2011 recommended Student's placement in a RTC. Student contends that while she was a resident of juvenile hall, LACOE was responsible for her education, including any recommended residential placements. Student then contends that although residential treatment continues to be recommended for Student, no local educational agency (LEA) has stepped forward to implement it. Student requests that OAH determine which LEA or LEAs are legally obligated to provide her with a FAPE and fund Student's out-of-state placement.

Alhambra contends in its motion that its responsibility for providing Student with a free appropriate public education (FAPE) ceased on May 20, 2011 when Student was placed at Juvenile Hall. Alhambra avers that since neither Student nor her parents resided within the geographical boundaries of Alhambra, Alhambra is not the responsible LEA for the RTC placement. In its opposition, Bellflower avers that Alhambra is the responsible LEA because it was the LEA which placed Student at the RTC and it was not the district of residency at that time.

LACOE asserted, in its motion to dismiss, that it ceased to be the responsible agency for providing Student with a FAPE, when Student was released from LACOE on July 18, 2011, and transported to Devereaux. LACOE argues that when Student was released from its custody, responsibility for a FAPE shifts back to Student's district of residence, Bellflower, and this is supported by a recent OAH decision. (See *Student v. Los Angeles County Office of Education* 2010040050/2011030120 (2011) (*Student v. LACOE*)).

Alhambra's arguments are unpersuasive for a variety of reasons. First, Alhambra's arguments raise disputed issues of facts that can only be resolved through documentary and testimonial evidence at hearing. Although the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g.,

civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

Here, Alhambra's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits based on factual information and documents relating to events that occurred after the filing of Student's complaint. Because special education law does not provide for a summary judgment procedure, this motion must be denied, without prejudice to Alhambra presenting its evidence at hearing.

There is also a factual dispute as to which LEA is responsible for Student's placement, particularly once she leaves juvenile hall. Student contends that her adoptive parents continue to reside within Bellflower's boundaries and that Bellflower is therefore responsible for implementing her IEP if she is placed at a residential treatment center. Bellflower argues that it is not responsible for Student's education because she resided in another school district prior to entering juvenile hall and because Student has not enrolled in Bellflower. Alhambra contends that Bellflower is responsible for implementing Student's IEP. Here, although Student received services from LACOE during the period in dispute, the issue of which educational agency was responsible for providing Student a FAPE at times after the complaint was filed is entirely fact-dependent and not facially outside OAH jurisdiction.

For all of the above reasons, LACOE's motion to dismiss is denied.

ORDER

1. Alhambra's motion to dismiss is denied.
2. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: August 25, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings