

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 BELLFLOWER
USD'S MOTION TO DISMISS IT AS A
PARTY

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, and the Los Angeles County Office of Education. 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 to this case. Bellflower contends that it is not responsible for providing Student with special education and related services under her IEP. Bellflower contends that Student was not a resident of Bellflower on May 3, 2011, when her IEP was developed, because Student resided in a residential facility located in another school district. Bellflower then contends that at the time she filed her complaint, Student resided at juvenile hall in Los Angeles County and that the Los Angeles County Office of Education became responsible for implementing Student's IEP. Bellflower contends that Student has not enrolled in a Bellflower school, that it was not Student's school district of residence at any time relevant to the complaint, and that it therefore is not a proper party to this action.

Student filed an opposition to Bellflower's motion to dismiss on July 6, 2011. Student responds to the motion by asserting that Bellflower is a proper party because Student's adoptive parents, who are the holder of her educational rights, live within Bellflower's boundaries.

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

DISCUSSION

The background facts in Student's complaint state that Student's adoptive parents 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, 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, 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 was residing there at the time she filed her complaint. Student contends that while she is a resident of juvenile hall, the Los Angeles County Office of Education is responsible for her education, including any recommended residential placements. However, Student contends that once she is transferred from juvenile hall to a residential placement, Bellflower has the legal obligation of providing her education at the placement since her adoptive parents continue to reside within Bellflower's boundaries.

Bellflower maintains that it is not now and was not Student's district of residence at the time of her May 3 IEP. Bellflower also maintains that the May 3 IEP recommended that Student continue to reside at Maryvale and that she attend Logsdon, a non-public school located on the Maryvale premises, both of which are outside of Bellflower's boundaries.

Bellflower's arguments are unpersuasive for a variety of reasons. First, Bellflower'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, Bellflower'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 which is disputed between the parties. For example, Bellflower contends that Student's May 3 IEP recommends that she continue residing at Maryvale and continue attending school at Logsdon. Student responds that this same IEP recommends that she be placed at an out-of-state residential treatment center. The resolution of this issue can only be made by examining evidence, which is outside the scope of a motion to dismiss.

There is also a factual dispute as to which local educational agency 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 appears to argue 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. Bellflower offers no evidence that Student's adoptive parents do not reside within its boundaries.

Finally, there is legal support for the proposition that the school district where a student's parents reside is a proper party to a due process action even when the student is residing at juvenile hall and the county office of education is presently responsible for providing the student with special education and related services, including a proposed residential placement. *In Los Angeles County Office of Education v. C.M.* (C.D.Cal. 2011) 2011 WL 1584314, the district court found that the Los Angeles Unified School District (LAUSD) should have been joined as a party in the due process hearing to determine whether student C.M.'s rights to a free appropriate public education had been violated. The district court stated that although C.M. presently resided in juvenile hall, and the Los Angeles County Office of Education was responsible for her education while she was there, another school district might become responsible once C.M. left juvenile hall. Since LAUSD might be the responsible school district based upon C.M.'s residency, it was a necessary party to the due process litigation.

A very similar situation exists in this case. Although Student presently resides at juvenile hall, if she is transferred to a residential placement, another school district may have legal responsibility for implementing her IEP. Student contends that her adoptive parents reside within Bellflower's boundaries. Bellflower does not contend otherwise. Therefore, as a potential district of residence for Student, Bellflower is a proper party to this action. Additionally, even if Bellflower contended that Student had no basis for residency there, the resolution of that issue would depend on a review of evidence and therefore would be beyond the scope of a motion to dismiss.

ORDER

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

Dated: July 8, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings