

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 LOS ANGELES
COUNTY OFFICE OF EDUCATION'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 reside 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 contends that it is no longer the responsible educational agency to provide Student with special education and related services under her IEP, because Student has been released from juvenile hall and is no longer attending a LACOE program. LACOE then contends 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 is 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 asserts that

LACOE is 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.

For the following reasons, LACOE'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 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.

LACOE admits in its motion that it was responsible for Student's education while she was confined and attending a juvenile court school. However, LACOE asserts 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 and this is supported by a recent OAH decision. (See *Student v. Los Angeles County Office of Education* 2010040050/2011030120 (2011) (*Student v. LACOE*).

In its opposition, Bellflower continues to maintain that it was not Student's district of residence at the time of her May 3, 2011 IEP. Bellflower asserts that LACOE should not be dismissed because it was the main LEA responsible for the delivery of service Student was seeking on June 15, 2011, and LACOE conducted Student's July 1, 2011 IEP team meeting where the team agreed and parent consented to Student's placement at Devereaux. Further, Bellflower asserts that the complaint should be dismissed in its entirety because it does not address any past violation of state or federal statute or denial of FAPE.

LACOE's arguments are unpersuasive for a variety of reasons. First, LACOE'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, LACOE'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. LACOE attached five exhibits to its motion: a LACOE Contract Request; a June 27, 2011 Superior Court Minute Order; Student's July 1, 2011 IEP; correspondence from Devereaux; and a West Shield Adolescent Services invoice to LACOE. LACOE explains that the IEP team recommended placement at Devereaux, Student consented, the Juvenile Court released Student to the RTC, and LACOE funded Student and Student's transportation to Devereaux on July 18, 2011 via West Shield Adolescent Services. LACOE then argues that because Student was released from juvenile hall, LACOE ceased to be the responsible educational agency and should be dismissed. In its motion, LACOE provides documents and legal authority, to support its request and requests a finding that it is no longer the responsible agency. Because special education law does not provide for a summary judgment procedure, this motion must be denied, without prejudice to LACOE 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.

Finally, LACOE cites a recent OAH case to support its argument that the school district of residence is responsible for providing a student a FAPE upon her release from juvenile hall. LACOE asserts that because Student was released from juvenile hall it is no longer responsible for providing Student a FAPE. However, LACOE's request for summary adjudication is not supported by *Student v. LACOE*. Here, Student named four parties including LACOE and asked for an evidentiary hearing to determine which agency was responsible for implementing her RTC placement. *Student v. LACOE* demonstrates that resolution of the responsible LEA is a fact-sensitive issue that is beyond the scope of a motion to dismiss.

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

ORDER

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

IT IS SO ORDERED.

Dated: August 19, 2011

/s/

CLARA L. SLIFKIN
Administrative Law Judge
Office of Administrative Hearings