

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012010165

ORDER DENYING MOTION TO  
DISMISS

On January 6, 2012, Student filed a due process complaint with the Office of Administrative Hearings (OAH) against Alhambra Unified School District (AUSD) and Hacienda La Puente Unified School District (HLPUSD). Student generally asserts that one of the two Districts is responsible for providing her with a special education placement at the nonpublic school (NPS), Logsdon, where she is presently placed pursuant to an IEP held by AUSD. On January 24, 2012, HLPUSD filed a motion to dismiss. Student filed opposition on January 27, 2012. On January 31, 2012, AUSD filed opposition to the motion and notice of joinder with Student's opposition. HLPUSD filed a reply to the oppositions on February 1, 2012.

Although 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.

Student asserts that she is a foster child. In July 2011, DCFS moved her from a group home within AUSD's boundaries to her foster parent's home within HLPUSD. Student wanted to remain at the special education placement in Logsdon and therefore attempted to invoke her right as a foster child under Education Code section 48853.5, subsection (d)(1). Namely, she wished to remain at her "school of origin," claiming that it was Logsdon. Student further alleged that AUSD demanded that Student enroll in HLPUSD, which AUSD supposedly alleged was the responsible LEA. Student would not enroll at HLPUSD because HLPUSD could not assure that Student could remain at Logsdon, stating the HLPUSD did not contract with the Logsdon.

HLPUSD's motion contends that there are no disputed facts, that a proper statutory interpretation would indicate that HLPUSD could not be the LEA responsible for Student's "school of origin," that OAH lacks jurisdiction because the complaint does not raise any special education related issues, and that any issues regarding HLPUSD obligations are premature because Student has never enrolled. Student and AUSD respond by stating there

are unresolved issues of fact, that OAH has jurisdiction to determine which district is the LEA for a special education student, and that HLPUSD's statutory analysis of the "school of origin" exception to residency is erroneous.

HLPUSD errs in asserting that OAH is without jurisdiction. The complaint concerns which district is the responsible LEA for Student's special education placement at Logsdon. Student specifically requests that OAH find AUSD or HLPUSD responsible for the NPS placement. Though generally applicable educational placement statutes are at the core of the dispute, special education placement is the consequence of the dispute. Therefore, the matter is subject to a special education due process before OAH.

Further, HLPUSD mistakenly states that issues regarding HLPUSD's special education obligation are not ripe for determination. The motion claims that Student was never enrolled at HLPUSD and that HLPUSD has never provided – or had been obligated to provide – special education services to Student. Thus, HLPUSD argues there are no SE issues to resolve regarding HLPUSD special education obligations. However, Student has alleged that she did not enroll at HLPUSD because HLPUSD stated that it would not continue placement at the Logsdon NPS. If this factual contention is true, HLPUSD has already exercised some special education evaluation of Student's needs and HLPUSD's placement intentions.

HLPUSD's assertion that OAH does not have jurisdiction to determine which public agency is responsible for providing special education is also in error. Student unambiguously contends that either AUSD or HLPUSD is responsible for the special education placement at Logsdon; yet, both districts claim they are not. Student is entitled to a determination. Student and AUSD cite ample law in support of this proposition. Therefore, for these reasons, OAH has jurisdiction over HLPUSD.

HLPUSD's motion engages in substantial statutory analysis, concluding that it cannot be found responsible for providing Student's placement at Logsdon. HLPUSD states that Logsdon is the Student's "school of origin" and the statutes unambiguously declare that the LEA is where the "school of origin" is located. Student and AUSD disagree. However, the parties do not thoroughly address the consequence of Education Code section 48853.5, subsection (d)(10), which states that the Legislative intent is that subdivision (d), the "school of origin" exception, not supersede or exceed other laws governing special education services for eligible foster children. Does this mean that the exception does not apply to special education students? Does the subdivision mean that special education students are entitled to the exception, but not when the placement is in a non-district school, like a NPS? Thus, HLPUSD's motion also fails because it does not take into account the entire statutory scheme.

Finally, left unanswered is how Education Code section 48853.5, subsection (e), applies to a special education student? The subsection outlines a process of determining the "school of origin" for exercising the subsection (d) exception. Yet, the powers invested in

the foster child's liaison and the holder of educational rights appear to circumvent the powers reserved for an IEP team to place a special education student.

As noted, factual disputes exist regarding the circumstances of Student's situation. Additionally, a proper analysis of the statutory scheme involving the residency exception for foster children, who are also special education students, requires a full examination of Student's factual assertions and special education needs.

Accordingly, HLPUSD's motion is denied. Final determination requires a due process hearing. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: February 07, 2012

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings