

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL REPRESENTATIVE ON  
BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL  
DISTRICT, SAN JUAN UNIFIED  
SCHOOL DISTRICT, WESTERN PLACER  
UNIFIED SCHOOL DISTRICT,  
WASHINGTON UNIFIED SCHOOL  
DISTRICT, SACRAMENTO COUNTY  
OFFICE OF EDUCATION, CALIFORNIA  
DEPARTMENT OF EDUCATION, AND  
COUNTY OF SACRAMENTO, CHILD  
PROTECTIVE SERVICES.

OAH CASE NO. 2012061030

ORDER DENYING SACRAMENTO  
COUNTY CHILD PROTECTIVE  
SERVICES' MOTION TO DISMISS

On June 25, 2012, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Elk Grove Unified School District, San Juan Unified School District, Western Placer Unified School District, Washington Unified School District, Sacramento County Office of Education, California Department of Education and the County of Sacramento, Child Protective Services (CPS).<sup>1</sup> On July 10, 2012, CPS filed a Motion to Dismiss, alleging that it is not a proper party to this action because it is not a responsible public agency under special education laws. On July 13, 2012, Student filed an opposition. On July 17, 2012, CPS filed a reply brief.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other

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<sup>1</sup> On July 16, 2012, Student dismissed without prejudice the Sacramento City Unified School District as a party. OAH will issue a separate order that dismisses the Sacramento City Unified School District.

public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

Title 34, Code of Federal Regulations, parts 300.33 states that a “[p]ublic agency includes the SEA [state educational agency], LEAs [local educational agencies], ESAs [educational service agencies], nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.”

Government Code, section 7586, subdivision (a) provides:

All state departments, and their designated local agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter.

## DISCUSSION

CPS contends that it is not an appropriate party in the matter because it is not responsible for nor does it provide special education services to Student. CPS contends that pursuant to Welfare and Institutions Code, section 16501, subdivision (a), that its statutory mandate is to prevent the abuse, neglect and exploitation of children, not the provision of special education services. Student asserts that CPS is an appropriate party because CPS has not considered Student’s educational needs when making residential placements and has not provided Student with services in his Individualized Education Program (IEP).

As to CPS’s contention that it is not a responsible public agency because it does not provide special education or related services to children, Welfare and Institutions Code, section 16501.1, subdivisions (c)(4) and (f)(8), require CPS to consider a child’s education in placement decisions that will meet the child’s special needs and promote the child’s best interests. Nothing in Student’s complaint or CPS’s motion to dismiss allege CPS’s decision to repeatedly change Student’s residential placement was made to prevent the abuse, neglect and exploitation of Student. The factual allegations in Student’s complaint, which CPS does not controvert, focus on CPS’s involvement in the educational decision-making process when it made residential placement decisions and failure to provide educational services in Student’s IEP, which creates a triable issue for hearing whether CPS is a public agency under Federal and California special education laws.

CPS also cites to *Student v. County of Sacramento, Child Protective Services* (March 20, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2012020586, in support of its motion to dismiss. However, that case is distinguishable on two grounds. First, student's complaint and documents attached to the parties' briefs established that CPS's decision not to permit foster parents and the school district from implementing the sensory diet in the IEP was due to health and safety concerns, not educational. Secondly, CPS prevented the foster parents from implementing portions of the sensory diet because the California Department of Social Services informed CPS that the foster parents' actions violated licensing regulations. Therefore, in the case CPS cites, OAH did not have jurisdiction to hear student's claim as there was no claim involving the provision of special education services. However, in this instant case, CPS did not establish that the claims in Student's complaint did not involve the provision of special education services, and accordingly, CPS's motion to dismiss is denied, without prejudice, as a triable issue exists for hearing. However, nothing in this order prevents CPS from re-filing its motion to dismiss with additional evidence, such as declarations, court orders and IEPs, to establish that its actions, as alleged in the complaint, do not constitute the provision of special education services or instruction, or that it does not have the responsibility to provide such services or instruction.

#### ORDER

1. CPS's Motion to Dismiss is denied without prejudice.
2. CPS shall provide a copy of this order of the Juvenile Court of Sacramento County to be included in Student's case file.

Dated: July 18, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings