

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL REPRESENTATIVE ON
BEHALF OF STUDENT,

v.

COUNTY OF SACRAMENTO, CHILD
PROTECTIVE SERVICES.

OAH CASE NO. 2012061030

ORDER GRANTING MOTION TO
DISMISS PARTY AND ORDER OF
DISMISSAL

A telephonic prehearing conference (PHC) was heard in this matter on August 13, 2012, before Administrative Law Judge (ALJ) Theresa Ravandi, Office of Administrative Hearings (OAH). Attorney Christian M. Knox appeared on behalf of the Student. Attorney Rick Heyer appeared on behalf of Sacramento County Child Protective Services (CPS). During this PHC, the parties were ordered to provide further briefing on the issue of OAH's jurisdiction over CPS, and CPS's motion to be dismissed as a party. On August 17, 2012, CPS filed a Motion to be Dismissed as a Party. On August 27, 2012, Student filed an Opposition.

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 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."

In California, the determination of which agency is responsible to provide education to a particular student, is, in most instances, governed by residency requirements as set forth

in sections 48200 and 48204 of the Education Code. The Individuals with Disabilities Education Act (IDEA) requires states to develop programs for ensuring that the mandates of the IDEA are met, and that children eligible for special education receive a free appropriate public education (FAPE). (20 U.S.C. § 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the local education agency (LEA), usually the school district in which the parents of the child reside. (Ed. Code, §§ 56300, 56340 [describing LEA responsibilities].) The law also contemplates that, when a parent disputes the educational services provided to the special needs child, the proper respondent to the due process hearing request is the LEA. (Ed. Code, 56502, subd. (d)(2)(B) [LEA's response to due process complaint].) Only in unusual circumstances does California law deviate from that statutory scheme to require a different entity to provide those services.

The purpose of the IDEA (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

The superior court exercises the jurisdiction conferred by the juvenile court law and when doing so is known as the Juvenile Court. (Welf. & Inst. Code, § 245.) The purpose of the juvenile dependency provisions is “to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent re-abuse of children.” (Welf. & Inst. Code, § 300.2.) When the juvenile court, acting under the doctrine of *parens patriae*, acquires jurisdiction and properly assumes custody of the minor, its jurisdiction is paramount. (*In re William T.* (1985) 172 Cal.App.3d 790, 797.) As announced in *In re Syson* (1960) 184 Cal.App.2d 111, 117, “While the juvenile court, on adequate facts, retains jurisdiction and stays within the bounds of its legal power, no other court has the right to interfere with its supervision, for the state, of the children involved.” (*In re William T.*, *supra*, at 798.)

“The juvenile court has a special responsibility to the child as *parens patriae* and must look to the totality of a child's circumstances when making decisions regarding the

child.” (*In re Roger S.* (1992) 4 Cal.App.4th 25, 30-31.) According to the California Supreme Court, “The Legislature, however, has determined that what is in the child's best interests is best realized through implementation of the procedures, presumptions, and timelines written into the dependency statutes.” (*In re Zeth S.* (2003) 31 Cal.4th 396, 410.)

There are extensive juvenile court laws protecting the educational rights of dependent children of the court. According to Welfare and Institutions Code section 16501.1, subdivision (c)(4), “the selection of the most appropriate home that will meet the child's special needs and best interests shall also promote educational stability by taking into consideration proximity to school of origin and school attendance area, the number of school transfers that the child has previously experienced, and the child’s matriculation schedule ...” The foster child’s bill of rights was amended in 2010 to expand the child’s rights to include minimal disruption to school attendance and educational stability. (Welf. & Inst. Code, § 16001.9, subd. (a)(13).) Under Welfare and Institutions Code section 16501.1, subdivision (f)(8), the dependent child’s case plan shall ensure the educational stability of the child while in foster care and shall include both of the following:

(A) An assurance that the placement takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement; and

(B) An assurance that the placement agency has coordinated with the person holding the right to make educational decisions for the child and appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement or, if remaining in that school is not in the best interests of the child, assurances by the placement agency and the local educational agency to provide immediate and appropriate enrollment in a new school and to provide all of the child's educational records to the new school.

The Education Code requires that educators, and county placing agencies such as CPS, as well as attorneys and the juvenile court work collaboratively to maintain stable school placements for foster youth. (Ed. Code, §§ 48850, subd. (a).) Any person having an interest in a child who is a dependent of the juvenile court, may petition the court for a hearing to change, modify, or set aside any prior order of the court. If it appears that the best interests of the child may be promoted by the proposed change of order, the court shall order that a hearing be held. (Welf. & Inst. Code, § 388, subs. (a) and (d).) While the child is under the jurisdiction of the juvenile court, all issues regarding his or her custody shall be heard by the juvenile court. (Welf. & Inst. Code, § 304.)

Additionally, California Rules of Court, rule 5.651(a)(3) addresses the educational rights of children before the juvenile court, and specifically incorporates rights under the IDEA. According to the Advisory Committee Note, “this rule does not limit these requirements or rights. To the extent necessary, this rule establishes procedures to make these laws [IDEA, the Americans with Disabilities Act, and section 504 of the Rehabilitation Act of 1973] meaningful to children in foster care.”

The juvenile court must continually inquire about the education of the child and the progress being made to enforce any rights the child has under these laws. Pursuant to California Rules of Court, rule 5.651(b)(2), “at the disposition hearing and at all subsequent hearings ... the juvenile court must address and determine the child’s general and special education needs, identify a plan for meeting those needs, and provide a clear, written statement ... specifying the person who holds the educational rights for the child.” The county social worker is required to notify the court, the child’s attorney, and the educational representative or surrogate parent within 24 hours of any decision to change a student’s placement which will result in a change in educational placement. (Cal. Rules of Court, rule 5.651(e)(1)(A).) The child’s attorney or the educational rights holder may request a hearing if they disagree with the proposed change in placement, or the Court on its own motion may set a hearing. (Cal. Rules of Court, rule 5.651(e)(2).) During the pendency of the dispute, the student must be allowed to remain in his school of origin. (Cal. Rules of Court, rule 5.651(e)(3).) At the hearing, the court must determine whether the proposed placement and plan is based upon the best interests of the child, determine what actions are necessary to ensure the child’s educational and disability rights, and make all necessary orders to enforce those rights, including setting a hearing under Welfare and Institutions Code section 362 to join all necessary agencies regarding the provision of services. (Cal. Rules of Court, rule 5.651(f).)

DISCUSSION

CPS contends that OAH has no jurisdiction over it as CPS is not a public agency charged with providing Student with special education services and a FAPE. Additionally, CPS acts as an arm of the juvenile court regarding the welfare of dependent children of the court such as Student, and all of its actions are subject to the review of the juvenile court. It is CPS’ position that OAH has no authority to review its actions which are taken pursuant to orders of the juvenile court. CPS indicates that the juvenile court has jurisdiction over the educational needs of a dependent child, like Student, and is responsible for decisions impacting Student’s education. Finally, CPS contends that it has no obligation to document services in Student’s IEP.

Student contends that CPS’ motion to be dismissed as a party should be denied because its actions have directly impacted Student’s right to an education and have denied Student a FAPE. Student maintains that CPS must be the responsible public agency as it is solely responsible for Student’s placements. Student alleges that CPS has “unilaterally” changed Student’s placement at least three times in the past two years resulting in changes in his educational placement and inappropriate educational placements. It is Student’s position that when CPS makes a residential placement, it must be responsible for providing Student a FAPE. Student contends that because his IEP must identify all related services he requires to access his educational program, that CPS had an obligation to document in his IEP the mental health services he was receiving as a dependent child of the court.

Student's position is not persuasive. Student makes several conclusory statements without any statutory support. CPS is not a proper party in a due process case under the IDEA because it is not a provider of special education services to children and has no duty to provide a FAPE to Student. (Ed. Code § 56501, subd. (a).) The law does specify which LEA is responsible for the education of a foster child such as Student. Additionally, Student fails to provide a legal basis for his contention that OAH has the authority to grant the remedies requested. OAH has no jurisdiction to order CPS to provide compensatory education, to implement regulations to ensure that foster children remain within the same LEA, or to fund an out-of-state residential treatment facility for Student.

Student's argument overlooks the fact that CPS changes Student's placement pursuant to a standing court order vesting it with the care, control and custody of Student. Student fails to address the elaborate regulatory scheme in place in the juvenile court process for addressing placement changes which result in a change in Student's educational placement.

CPS is required to notify the court and the dependency attorney for the Student within 24 hours of a decision to effectuate a change in placement which will result in a change in his educational placement. Student's dependency attorney must then consult with Student and his educational rights holder and decide whether to dispute the change in placement. Additionally, the educational rights holder may request a hearing or the court itself may set the matter for a hearing. OAH has no authority to tell CPS whether, when or where to move Student. The juvenile court remains the appropriate forum for any disputes as to the appropriateness of Student's placement changes or services provided by CPS.

Even if CPS did move Student multiple times based upon his special educational needs and with the intent to address his educational needs, Student's forum, with respect to any alleged violations by CPS, remains the juvenile court. Even Student's educational attorney has recourse at any time, as a "person with an interest in the minor" to bring a motion pursuant to Welfare and Institutions Code section 388 to modify any prior placement orders of the court. The juvenile court is responsible for decisions impacting Student's education. It is the ultimate province of the juvenile court to determine where a dependent child will be placed and what services CPS must provide. The court has the authority to join any educational agency that it determines has failed to meet a legal obligation to a dependent child in any hearing before it, be it a placement dispute under California Rules of Court, rule 5.651 or a petition to modify a placement order pursuant to Welfare and Institutions Code section 388. (Welf. & Inst. Code, § 362; Cal. Rules of Court, rule 5.575.) Student is not left without a remedy nor is Student, as a foster child, deprived of the same protections afforded non-dependent children under the IDEA.

Student likewise has failed to demonstrate that CPS has any obligation to Student by way of documenting his IEP or providing related services. CPS has established that it is not a provider of special education services or related services pursuant to a student's IEP.¹

ORDER

1. CPS' Motion to be Dismissed as a Party is granted. As no other respondents remain, Student's request for a due process hearing is hereby dismissed.

2. CPS shall provide a copy of this order to the Juvenile Court of Sacramento County to be included in Student's dependency file.

IT IS SO ORDERED.

Dated: August 30, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings

¹ This order does not limit in any way Student's ability to pursue any failures by an LEA to develop and implement an IEP in front of OAH. This order is limited to the determination of OAH's jurisdiction over CPS.