

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EASTSIDE UNION SCHOOL DISTRICT;
TAHOMA CHARTER SCHOOL, ALUM
ROCK SCHOOL DISTRICT.

OAH CASE NO. 2012110722

ORDER DENYING EASTSIDE'S
MOTION TO DISMISS

On November 21, 2012 Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH) naming the Eastside Union High School District (Eastside). On December 5, 2012, Eastside filed a Notice of Insufficiency (NOI) and a Motion to Dismiss as to Student's complaint. On December 7, 2012, OAH granted Eastside's NOI and gave Student 14 days to file an amended complaint. OAH did not rule on the Motion to Dismiss because there was no operative complaint.

On December 20, 2012, Student filed an amended complaint (amended complaint), naming Eastside, Tahoma Charter School (Tahoma), Alum Rock School District (Alum Rock), Santa Clara County Office of Education (SCCOE). On December 28, 2012, SCCOE filed a Motion to Dismiss, alleging that it is not a responsible public agency for Student's special education services. Counsel for SCCOE were also counsel for Eastside, but Eastside did not file a new Motion to Dismiss based on the amended complaint. Student, Eastside, Tahoma, and Alum Rock did not file a response.

On January 9, 2013, OAH granted SCCOE's Motion to Dismiss. On January 9, 2013, Counsel for Eastside orally requested a ruling on its prior Motion based on the original, insufficient complaint.

The purpose of the Individuals with Disabilities Education Act (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" (FAPE), 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.)

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.) Eastside seeks a dismissal of all claims in the original complaint alleged prior to Student enrolling in its district.

Here, Eastside's motion to dismiss was rendered moot when OAH granted the challenge to the sufficiency of the complaint and vacated all dates. When Student filed an amended complaint, Eastside did not file a motion based upon the current pleading.

Accordingly, Eastside's Motion to Dismiss is denied because it was made as to the original complaint and is now moot. District may renew its motion, provided that any new motion address the allegations of the amended complaint.

IT IS SO ORDERED.

Dated: January 15, 2013

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings