

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT, ET AL.

OAH CASE NO. 2013020042

ORDER DENYING MOTION TO
DISMISS

On January 31, 2013, Student filed a request for due process hearing. On March 15, 2013, Student filed an amended request for due process hearing (amended complaint) adding the Sacramento City Unified School District (District) as a respondent.

On April 2, 2013, the District filed a motion to dismiss the District from Student's case, contending that Student is not a resident of the District. On April 5, 2013, Student filed an opposition to the motion. On April 5, 2013, the District filed a reply.

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.)

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.)

The District's motion to dismiss is based on the address listed for Student in the amended complaint. The amended complaint lists the address for Student's counsel as Student's address. Because Student's counsel's address is not within the jurisdiction of the District, the District argues that the case must be dismissed against the District.

Student opposes the motion. Student explains that Student's legal guardian lives within the District's jurisdiction. Student points out that the District attended the Student's

December 2012 individualized education program (IEP) meeting. Student contends that the requirement to have an address listed on a due process complaint is to provide a place where notices can be sent, not to determine residency within a school district.

The District's reply states that Student's amended complaint does not mention Student's legal guardian, nor does it list her address. The District argues that, if the information listed in the Student's opposition papers is true, the amended complaint is insufficient because it does not contain the correct information regarding the child's residence as required by law.

The law provides a limited window for a school district to challenge the sufficiency of a due process complaint. Under Education Code section 56502, subdivision (d)(1), a due process hearing request "shall be deemed to be sufficient" unless the other party notifies the hearing office within 15 days of receiving the due process hearing request. The District admits it did not meet the 15-day deadline, but asks that the time be extended.

The District cites no compelling legal or equitable reason to grant such an extension. If the District was truly confused by the address for Student listed on the pleading, it should have timely filed a notice of insufficiency instead of waiting to file a motion to dismiss. The District missed the filing deadline and the amended complaint is deemed sufficient as a matter of law.

The motion to dismiss is denied. This matter will proceed as currently set. If the District has evidence to show that Student does not reside in the District, the District can raise that defense at hearing.

IT IS SO ORDERED.

Dated: April 9, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings