

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COUNTY OF SACRAMENTO OFFICE OF  
EDUCATION.

OAH CASE NO. 2013020042

ORDER GRANTING SACRAMENTO  
COUNTY DEPARTMENT OF  
PROBATION'S MOTION TO DISMISS

On January 31, 2013, Parent's designated representative, on behalf of Student, filed a due process hearing request (complaint) naming the County of Sacramento Office of Education (SCOE) and the County of Sacramento Department of Probation (Probation) as respondents.

On February 11, 2013, Probation filed a motion to dismiss asserting that it is not a proper party to this action because it is not a responsible public agency under special education laws. On February 14, 2013, Student filed opposition.

On February 20, 2013, OAH requested further briefing. On February 25, 2013, Probation filed a supplemental brief. On February 27, 2013, Student filed a supplemental brief.

APPLICABLE LAW

Although special education law does not provide a summary judgment procedure, 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....), and easily provable. Here, the sole issue is whether Probation is a proper party, a matter readily determined without a formal summary judgment procedure.

In general, Individuals with Disabilities Education Act (20 U.S.C. §1400, et seq. (IDEA)) due process hearing procedures extend to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) "Public agency" under the IDEA is defined to include the state educational agency (SEA), local educational agencies (LEAs), educational service agencies (ESAs), nonprofit public charter schools, and any other political subdivisions of the State that are "responsible for providing education to children with disabilities." (34 C.F.R. §300.33 (2006).) A "public agency" under State law 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.)

The 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 generally places the primary responsibility for providing special education to eligible children on the LEA, usually the school district in which the parents of the child reside. (Ed. Code, §§ 56300, 56340 [describing LEA responsibilities].) However, while a student is detained in a county juvenile hall, the local county office of education is the responsible local education agency for providing a student with a FAPE. (Ed. Code, §§ 48645.1, 48645.2, 56150.)

An incarcerated minor is a ward of the juvenile court and under its jurisdiction. (Welf. & Inst. Code § 602, subd. (a).) While the child is under the jurisdiction of the juvenile court, all issues regarding his or her custody are heard by the juvenile court, and the juvenile court retains exclusive jurisdiction over its orders. (Welf. & Inst. Code, §§ 245.5, 304; *In re William T.* (1985) 172 Cal.App.3d 790, 797.) 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).) At the hearing, the court will 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. (Cal. Rules of Court, rule 5.651(f).)

In making placement orders, the juvenile court seeks to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. (Welf. & Inst. Code, § 726, subd. (c)(2).) In all instances, educational and school placement decisions are based on the best interests of the child. (*Ibid.*) The juvenile court may order a ward of the court to be placed under the care, custody and control of a probation officer, who may place the minor as ordered. (Welf. & Inst. Code, § 727, subd. (a)(3).)

## DISCUSSION

Student’s complaint alleges that, upon Student’s incarceration, SCOE became the LEA responsible for providing Student with a FAPE. It alleges that despite Student being removed from two residential placements for fighting, and Student repeatedly sabotaging the

intake process for finding alternative placements, SCOE failed to develop social/emotional or behavioral goals and failed to offer Student mental health services at the December 19, 2012 IEP team meeting, asserting that Probation did not allow mental health providers into its detention facilities. Additionally, after the IEP meeting, Guardian's representative "spoke with both SCOE and Probation, inquiring as to how she could get a privately funded psychologist into juvenile hall to meet with [Student]." On these facts, Student claims that SCOE and Probation denied Student a FAPE during the 2012-2013 school year, with Probation denying him a FAPE by (i) failing to provide an appropriate placement and (ii) failing to allow mental health services to be provided in its juvenile detention facilities between residential placements. As remedies, Student seeks to have SCOE and Probation provide him with compensatory education and place him in an out-of-state residential facility.

In its motion to be dismissed as a party, Probation contends that OAH has no jurisdiction over it, as Probation is not a public agency charged with providing Student with special education services and a FAPE. Additionally, Probation established that the juvenile court has jurisdiction over the educational needs of incarcerated minors, and that Probation acts as an arm of the juvenile court, with no responsibility resting in Probation to provide Student with special education or related services.

Student contends that Probation's motion to be dismissed should be denied because its actions have directly impacted Student's right to an education, and therefore have denied Student a FAPE. Student maintains that Probation is responsible for implementing Student's residential placements, and so is involved in decisions regarding where and how Student will receive an appropriate education. In support of his opposition, Student submitted a standing order of the Sacramento County Juvenile Court directing Probation to implement its disposition orders for "appropriate housing of the minor" in accordance with various "levels" of placement, and a Juvenile Court order in Student's case that provided in part that "[t]he minor remains committed to the care and custody of the Probation Officer for suitable....Level A [in-state] placement."

Student contends in opposition that the facts of his complaint should be taken as true for purposes of a motion to dismiss. However, Student did not, and cannot, allege facts refuting statutory authority establishing that Probation was not the LEA responsible for providing educational services to Student. Student's evidence that Probation has acted under standing and specific orders of the juvenile court undermines, rather than supports, Student's position.

OAH's jurisdiction extends to "public agencies" as defined in the IDEA and State law. (Ed. Code, § 56501, subd. (a).) Both definitions require that the agency subject to due process be responsible for, or provide, special education and related services to the disabled student. (34 C.F.R. § 300.33 (2006); Ed. Code, §§ 56500 and 56028.5.) Thus, to be a proper party for a due process hearing, Probation must be responsible for providing Student with an education, or providing special education or related services to Student. It is not enough for Student to allege that Probation was a State agency and "involved in...decisions" regarding

Student's educational program if Probation was not also a "public agency" for due process purposes. Probation is not a provider of special education services responsible for providing students with a FAPE, and accordingly, is not a public agency subject to due process before OAH.

Student's argument overlooks the fact that Probation changes Student's placement pursuant to both standing and case specific orders of the juvenile court regarding the disposition of an incarcerated minor. 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. OAH has no authority to order Probation as to whether, when or where to move Student. The juvenile court remains the appropriate and exclusive forum for any disputes as to the appropriateness of Student's placement changes implemented by Probation pursuant to juvenile court order.

Similarly, OAH has no jurisdiction over issues of physical access to juvenile detention facilities.

Additionally, OAH has no jurisdiction to order Probation to provide compensatory education or to fund an out-of-state residential treatment facility for Student. Probation is not a public agency responsible for providing Student with educational services or a FAPE, and Student cites no authority for ordering these remedies to be provided by an agent of the juvenile court.

For the above reasons, Probation is entitled to dismissal because it is not a proper party under Education Code section 56501, subdivision (a).

#### ORDER

1. The County of Sacramento Department of Probation's motion to be dismissed as a party is granted.
2. Probation shall provide a copy of this order to the Juvenile Court of Sacramento County to be included in Student's juvenile court file.

Dated: March 05, 2013

/s/  
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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings