

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT,
et al.

OAH CASE NO. 2013040050

ORDER DENYING MOTION TO
DISMISS

On March 29, 2013, Student’s parent on behalf of Student filed a request for a due process hearing (complaint), naming the Downey Unified School District (District), among others, as the respondents.

On April 11, 2013, the District filed a motion to be dismissed from Student’s complaint, alleging that Student’s family does not reside within the District and the District has never provided special education services to Student. OAH has received no response to the motion.

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 did not attach a proof of service to its motion. That omission alone requires that the motion be denied. In addition, the only supporting documentation is a half-page declaration from the Director of Special Education for the District in which she generally avers that the contents of the moving papers are true and correct except for those matters “which are based upon my information and belief.” As to those matters, she states, “I am informed and believe that they are true.” She does not specify which of the

contentions contained within the moving papers fall into the “information and belief” category. OAH generally will only dismiss matters that are facially outside of OAH jurisdiction and that do not require a factual determination. Her declaration does not present a sufficient basis to dismiss a case.

ORDER

The motion to dismiss is denied. The matter shall proceed as scheduled.

Dated: April 17, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings