

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2014041152

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, SIMI VALLEY UNIFIED
SCHOOL DISTRICT and CALIFORNIA
DEPARTMENT OF EDUCATION

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2014070148

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On July 17, 2014, OAH granted Student's motion to amend her complaint naming only Los Angeles Unified School District (Los Angeles) and the amended complaint was deemed filed on that date. The primary reason given by Student for filing the amended complaint was that she wished to add Simi Valley Unified School District (Simi Valley) and the California Department of Education (CDE) as respondent parties to the case.

On July 16, 2014, in anticipation of OAH granting Student's motion to amend, CDE filed a motion asking that it be dismissed from this matter because it is not a direct provider of educational services to Student.¹ On July 22, 2014, Student filed an opposition to CDE's motion, and CDE replied to this opposition on July 23, 2014. On the same date, Simi Valley filed its opposition to CDE's motion to dismiss, and Los Angeles Unified School District (Los Angeles) filed its own opposition to CDE's motion on July 24, 2014.

¹ None of the other parties questioned the timing of CDE filing its motion, so it is deemed filed at the time Student's motion to amend the complaint was granted.

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.)

When a student has been declared a dependent child, or ward of the juvenile court, that court may assign educational rights to an adult other than the parent or guardian of the student. (Welf. & Inst. Code §§ 361; 726, subd. (b).) Under certain circumstances, the school district in which the holder of educational rights resides may become the student’s district of residence, and in some cases that district may become responsible for providing educational services to the student. (Ed. Code, § 56155.5, subd. (a).) In rare instances, the state educational agency has been found responsible for providing educational services to the student. (*Orange County Department of Education v. California. Department of Education* (9th Cir. 2011) 668 F.3d 1052 (*Orange County*)).

DISCUSSION

In the present matter CDE contends that it should not be named as a public agency responsible for providing Student with educational services. The school districts and Student disagree. At the heart of the argument is *Orange County*, supra, 668 Fed.3d, 1052. In that case, there was a dispute between the parties as to which entity was responsible for funding the student’s residential placement in Utah. The special education student in that case, like Student in the instant case, was a dependent of the juvenile court. However, unlike Student in the instant case, parental rights had been terminated. A former foster parent had been found by the juvenile court to be a *de facto* parent, and for many years had participated in educational decision-making for him, even after he ceased to reside with her.

The *Orange County* case hinged on the definition of “parent,” and the interpretation of several versions of Education Code section 56028 which defines “parent” for the purposes of special education decision-making, as well as the applicability of Education Code section

48200.² Orange County contended that during the time period the student was in residential placement, he had no “parent,” and therefore, by default, CDE was responsible for paying the cost of his residential placement. However, as amended in 2009, Education Code section 56028, in subdivision (b)(2), specifically provides that the school district in which the educational rights holder resides may be responsible for the cost of a residential placement. Further, in subdivision (c) of section 56028, it specifically states that “‘Parent’ does not include the state or any political subdivision of government.”

Student in this case is a dependent of the Los Angeles County Juvenile Court. That court appointed a resident of Simi Valley as the holder of educational rights. Thus Simi Valley has correctly been named as a respondent in this action.³ And because Student resides in a group home within the boundaries of Los Angeles, that district is also a proper party to this action. Although Student argues that OAH could find neither school district responsible for providing her with educational services, under the law as it currently exists, specifically Education Code sections 56028 and 48200, as well as *Orange County*, that will not happen. Accordingly, CDE’s motion to be dismissed is granted.

ORDER

CDE’s motion to be dismissed from this matter is granted. CDE is dismissed as a party in the above-entitled matters. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

DATE: August 4, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

² In the course of the litigation, section 56028 was amended twice. The *Orange County* court considered three different versions, one from 2005, which was amended in 2007, and again amended in 2009. Section 56028 has not been amended since then.

³ This statement should not be construed as a finding that Simi Valley has some responsibility for the cost of educational services to Student, however.