

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 and SIMI VALLEY UNIFIED
SCHOOL DISTRICT.

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

OAH Case No. 2014070248

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION TO
DISMISS ISSUE

On April 28, 2014, Student filed a request for due process hearing (complaint), naming Los Angeles Unified School District (Los Angeles) as the respondent. On July 18, 2014, OAH granted Student's unopposed request to file an amended complaint which it had submitted to OAH on July 16, 2014. The amended complaint added Simi Valley Unified School District (Simi Valley) and the California Department of Education (CDE) as additional parties.¹

On July 18, 2014, Los Angeles filed a motion to dismiss Issue 2(b) in both Student's original complaint and the amended complaint, contending OAH does not have jurisdiction to decide the issue. On July 22, 2014, Student filed an opposition to the motion, and on July 25, 2014, Los Angeles filed a reply to that opposition. Neither CDE nor Simi Valley responded to Los Angeles's motion to dismiss the issue.

APPLICABLE LAW

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

¹ In a separate order, OAH granted CDE's motion to be dismissed as a party.

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.)

DISCUSSION

Student in this case is a dependent of the Los Angeles County Juvenile Court, and has been for many years. The Los Angeles County Department of Child and Family Services placed Student in the group home, Vista Del Mar Community Treatment Facility (Vista) in April 2013. Los Angeles argues in its motion to dismiss Issue 2(b) that “OAH lacks jurisdiction to hear disputes regarding DCFS placements[.]” In other words, Los Angeles claims that because Student has been placed by DCFS pursuant to a juvenile court order, OAH cannot make any educational residential placement decision.

Student’s issue 2(b) reads as follows, “From April 19, 2013 to the present, the District failed to appropriately assess and address [Student]’s mental health needs, and denied [Student] a FAPE by: [¶] failing to offer and provide residential placement as part of [Student]’s IEP [individualized education program].” Los Angeles cites two OAH Decisions which it claims supports its argument that OAH lacks jurisdiction to adjudicate Issue 2(b). As will be discussed below, neither Decision supports Los Angeles’s argument.² Student argues that OAH does have jurisdiction to adjudicate this issue.

Los Angeles first cites *Guardian on Behalf of Student v. ABC Unified School District* (OAH, July 11, 2013, No. 2013020685). In this case, the student was a dependent of juvenile court, and hospitalized in a psychiatric facility within the boundaries of ABC Unified School District (ABC). It was argued that ABC denied her a FAPE because it did not offer her an out-of-state residential placement at an IEP team meeting before her discharge. OAH conducted a due process hearing concerning this issue because it had jurisdiction to do so. The ALJ deciding the case determined that the psychiatric hospital was not an educational placement for the student, and therefore ABC was only responsible for

² OAH decisions in special education cases are not precedential. (Cal. Code Regs., tit. 5, §3085.) However, they are relied upon by the special education community for guidance, and therefore will be examined.

providing her with educational services during her hospitalization, and not for making a post-discharge offer of placement at an IEP team meeting.

The second case cited by Los Angeles is *Parents on Behalf of Student v. Los Angeles Unified School District* (OAH, September 15, 2010, No. 2010050752). In this case the student was a ward of the Los Angeles Juvenile Court and as such the Probation Department, in conjunction with the juvenile court, was responsible for determining his non-educational placement. An IEP was developed by the Los Angeles County Office of Education because it was providing him with educational services during incarceration at Juvenile Hall. During that time he was assessed by the Los Angeles County Department of Mental Health, and ultimately the IEP team agreed that he required residential placement for educational purposes due to mental health issues, and found two out-of-state residential placements for him.³ However, the student was subsequently placed in a group home within the boundaries of Los Angeles by the Probation Department. Parents claimed that because they were billed for certain “placement” costs, this was not a “free” appropriate public education placement. Again, OAH conducted a due process hearing, notwithstanding the student’s juvenile court status. The ALJ deciding this case declined to find Los Angeles had a duty to offer that student an out-of-state residential placement just because a prior IEP team had found that appropriate. Further, the Decision found that the student did not meet his burden of proof that placement in the local group home and its associated nonpublic school denied him a FAPE, particularly since the “bill” his parents claimed to have received from Los Angeles County appeared to be for restitution, not for education costs.

In the instant case, Los Angeles, seems to argue that any time a ward or dependent of the juvenile court is placed by that court, or the supervising probation department or social services agency, in a residential treatment program with a nonpublic school, OAH loses jurisdiction to determine whether that placement meets the special education student’s needs and has provided him or her with a FAPE. As previously noted, OAH does have jurisdiction to determine whether a special education student has been placed where s/he has received a FAPE. Because Student’s group home and associated nonpublic school is within the boundaries of Los Angeles, Los Angeles is required to ensure Student’s IEP provides her with a FAPE. If OAH determines that the group home and associated nonpublic school is not meeting her educational needs, an order by OAH can describe what type of educational placement and services will, and also provide for compensatory education. Should that occur, and it is found that Vista is not meeting her educational needs, Student’s attorney, or

³ A different statutory scheme was in place at this time for students with mental health issues that affected them educationally. County mental health agencies were responsible for conducting mental health assessments and recommending residential placements for children requiring them to meet educational needs. School districts would then bear educational costs only, with county mental health departments bearing non-educational costs. Now school districts bear the responsibility for determining whether a student with mental health issues requires residential placement for educational reasons, although some contract with county mental health agencies to do assessments.

the attorney for Los Angeles can file a request to modify the placement with the juvenile court pursuant to section 388 of the Welfare and Institutions Code. Accordingly, Los Angeles's motion to dismiss issue 2(b) is denied. However, it should be noted that this order makes no finding as to the appropriateness, or inappropriateness of Student's residential placement and nonpublic school placement; it simply finds that OAH has jurisdiction to decide this, even though Student remains a dependent of juvenile court.

ORDER

Los Angeles's motion to dismiss Student's Issue 2(b) is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: August 4, 2014

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings