

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN BERNARDINO COUNTY  
SUPERINTENDENT OF SCHOOLS;  
RIALTO UNIFIED SCHOOL DISTRICT;  
COLTON JOINT UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2015060423

ORDER DENYING MOTION TO  
DISMISS

On May 21, 2015, Student filed a Request for Due Process Hearing (complaint), naming San Bernardino County Superintendent of Schools (SBCSS), Colton Unified School District (Colton), and Rialto Unified School District (Rialto) as respondents.

On June 24, 2015, respondents filed a Notice of Representation authorizing Laura Chism, the Program Manager for the East Valley Special Education Local Plan Area to represent all respondents.

On June 29, 2015, Rialto filed a Motion to Dismiss.

On June 30, 2015, Student filed his response.

On July 2, 2015, all respondents filed a reply which included a declaration from Ms. Chism.

On July 2, 2015, Student filed a “Conditional Agreement to Dismiss” to dismiss Rialto.

APPLICABLE LAW

Parents have 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).) The Office of Administrative hearings has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029.) Although OAH has granted

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. . . . , OAH will not dismiss claims that have otherwise been properly pleaded.

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.)

The primary responsibility for providing a FAPE to a disabled student rests on a local educational agency. (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.) As a general rule, a student’s school of attendance is determined by the residency of his parent or guardian. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.) 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.

## DISCUSSION

In the present matter, respondents contend that Rialto is an improper party because it was not responsible for providing educational services to Student and it did not make decisions regarding Student. Rialto’s motion is the equivalent of a motion for summary judgment based on whether factual allegations can be demonstrated and how the law applies. Rialto fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

Student alleges the agreed upon assessments were not timely conducted by respondents after the April 2014 individualized education program and that Student’s requests for independent evaluations in November 2014 were refused or ignored. Student alleges he got lost on the first day of school and he has not attended school since August 4, 2014, because of Parent’s concerns for his safety. Student further alleges that the local educational agency responsible for Student is unclear from the written documentation, that the April 2014 IEP stated that SBCSS was the district of attendance and that Rialto was the district of residence, but other documentation indicated that Colton was the district of residence.

Rialto contends it was not responsible for providing educational services to Student and it did not make decisions regarding FAPE for Student. Rialto argues that Student resides within Colton and although he attended Jehue Middle School which was located on a Rialto campus, SBCSS operated Jehue. Only SBCSS employed administrators, supervisors,

teachers, and service providers served students who attended Jehue. Rialto employees did not participate in IEP team meetings for Jehue students placed by other school districts.

Student admits Rialto had no responsibility for his program, but that it was unclear if Rialto made educational decisions which created an unsafe situation in its building which prevented Student from attending school in August 2014. Student claims Rialto's motion should be denied without prejudice until such time as SBCSS and Colton stipulate they will not argue Rialto is responsible for any matter at issue.

In her declaration in support of the motion to dismiss, Ms. Chism states that Scott Wyatt, a "representative" from SBCSS and Janet Nickell, Colton's Director of Special Education, confirmed that SBCSS and Colton are the proper parties, and that Rialto was never responsible for providing educational services to Student or for making educational decisions pertaining to any provision of FAPE for Student. Ms. Chism's declaration is inadequate to establish that Rialto was not responsible for making decisions or providing special education and related services to Student. Ms. Chism's declaration fails to establish her familiarity with Student's program, the residency of Student's parent, or the responsibilities of Colton, Rialto and SBCSS as it pertains to Student. Ms. Chism's statements as to which agencies were responsible for Student are based entirely on her conversations with Mr. Wyatt and Ms. Nickell. The moving papers do not adequately identify Mr. Wyatt, describing him merely a "representative" of SBCSS, and as to both Mr. Wyatt and Ms. Nickell, it is unclear how they were in a position to know Rialto was not involved in making educational decisions or for providing special education to Student.

Student appears agreeable to dismissing Rialto, on the condition respondents make an adequate showing by way of declaration that Rialto is not a proper party and that SBCSS and Colton were the agencies responsible for evaluating Student and providing him a FAPE. However, OAH does not issue conditional dismissals. Furthermore, Student may voluntarily dismiss a party at any time.

For the reasons set forth above, Rialto's Motion to Dismiss is denied.

IT IS SO ORDERED.

DATE: July 10, 2015

/s/  
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LAURIE GORSLINE  
Administrative Law Judge  
Office of Administrative Hearings