

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPECIAL EDUCATION DIVISION  
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

vs.

LOS ANGELES UNIFIED  
SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N2006100537

**ORDER SETTING MOTION  
TO DISMISS FOR  
EVIDENTIARY HEARING**

On October 16, 2006, petitioner Student and his mother, represented by attorney Chike G. Onyla of Martin & Martin, LLP, filed a request for a due process hearing involving respondent Los Angeles Unified School District (District). On December 15, 2006, the District filed a motion with the Office of Administrative Hearings (OAH), from attorney Laura M. Marrero of the District's Office of General Counsel, to "bifurcate" the issue of residency in this case. On December 18, 2006, OAH provided the parties five business days, until December 26, 2006, within which to file a response. Student has failed to file a response to date. By not filing a response, Student has waived any objections to the motion, and it is unopposed.

APPLICABLE LAW AND DISCUSSION

California Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the public educational agency involved in the educational decisions of the child. That agency is determined by the residency of the pupil. If the District is not the district of Student's residency, the action has been brought against the wrong party. Hence, District's motion will be deemed a motion to dismiss.

In this case, the complaint requests placement in a nonpublic school, and other educational services. According to the District, the issue of Student's residency was raised by the proof of service form showing service of the complaint on Mother, with whom Student allegedly resides, at an address in Compton, California. If Compton is responsible

for Student's education, then it is possible that a complete hearing on the remaining substantive issues in this case would not be necessary. The substantive issues in the complaint should not be litigated until the issue of residency is addressed.

There is insufficient information upon which to rule on the motion. Neither party has filed any declarations under penalty of perjury as to the relevant facts regarding Student's residency, or why the District is or is not a proper party in this proceeding. More information is necessary in order to rule on District's motion.

### ORDER

1. The District's motion for dismissal shall be set for an evidentiary hearing on Thursday, February 8, 2007, beginning at 9:30 a.m.

2. The location of the evidentiary hearing is: Los Angeles Unified School District, 333 S. Beaudry Ave, 20th Floor Los Angeles, CA 90017

3. No later than 5:00 p.m. on Friday, February 2, 2007, each party shall file with OAH and serve on the other party a list of the witnesses and documents intended to be used at the evidentiary hearing.

DATED: January 4, 2007

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Special Education Division  
Office of Administrative Hearings