

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONROVIA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011010016

ORDER GRANTING MOTION TO
STRIKE ISSUE

On January 03, 2011, attorney Arlene Bell filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student naming Monrovia Unified School District (District) as the respondent.

On January 14, 2011, attorney Nancy Finch-Heuerman filed on behalf of District a motion to strike the complaint's Issue 4. OAH has received no response from Student to District's motion to strike.

APPLICABLE LAW

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 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 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.)

Education Code, title 2, division 4, part 26, chapter 5 (§§ 46600, et seq.) provides that school districts may enter into agreements for interdistrict attendance, that such agreements would stipulate the terms and conditions for interdistrict permit issuance, and that an interdistrict permit denial may be appealed to the school board of either school district. Interdistrict permit agreements are not within the domain of special education law and, therefore, are not subject to OAH jurisdiction on a due process complaint.

DISCUSSION

The complaint states that Student moved out of the District. Thereafter, Student's mother applied for an interdistrict transfer, permitting Student to attend in the District. District denied the interdistrict transfer permit. Student has since been attending a special day class in the current district of residence, Duarte Unified School District. Student's Issue 4 asserts that District denied Student a FAPE by declining to issue the interdistrict transfer permit.

Interdistrict permits are subject to interdistrict agreements, authorized by the Education Code and applicable to all students. Therefore, District's alleged denial of an interdistrict permit is not subject to IDEA due process review and is outside the jurisdiction of OAH.

ORDER

District's Motion to Strike the complaint's Issue 4 is granted.

IT IS SO ORDERED.

Dated: February 04, 2011

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings