

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT; LOS ANGELES COUNTY
OFFICE OF EDUCATION; CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2011030120

ORDER DENYING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On February 25, 2011, Student filed a Due Process Hearing Request (complaint), naming the Los Angeles Unified School District (LAUSD), Los Angeles County Office of Education (LACOE), and the California Department of Education (CDE), as respondents. On April 5, 2011, CDE filed a Motion to Dismiss, contending it is not a responsible educational agency and should therefore be dismissed as a party. Student filed no opposition.

APPLICABLE LAW AND DISCUSSION

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 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.)

The IDEA leaves it to the individual states to establish mechanisms for determining which agency within a state is financially responsible for the provision of special education services, as well as procedures for reimbursement between agencies, and procedures for the resolution of interagency disputes. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) The requirement of establishing mechanisms for determining which agency within a state is financially responsible for the provision of special education services may be met through statutes, regulations, or interagency agreements. (20 U.S.C. § 1400(d)(12)(C).)

In California, the determination of which agency is responsible to provide education to a particular child is controlled by the residency of the parent or legal guardian, as set forth in Education Code, Sections 48200 and 48204. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57 (interpreting §§ 48200 and 48204 as allowing enrollment of children in school district where only part of a residence was located).) Under section 48200, children between the ages of 6 and 18 must attend school in the district “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.)

Education Code, Section 56041, establishes the standards for determining the district of residence responsible for special education and related services to a pupil between the 18 and 22 years of age whose individualized education program (IEP) team determined special education services would be required beyond pupil’s 18th birthday. For a nonconserved pupil, the last district of residence in effect prior to the pupil’s attaining the age of majority shall become and remain as the responsible local educational agency, as long as and until the parent or parents relocate to a new district of residence. At that time, the new district of residence shall become the responsible local educational agency.

Notwithstanding the primary responsibility here of the last district of residence of Student’s parents, California law provides for certain responsibilities, including juvenile court schools, to be regionalized by local plans and administered, according to the local plan then in effect, by county offices of education. (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 *et seq.*) CDE oversees the administration of local plans through the State Board of Education, an arm of CDE whose responsibilities include adopting regulations for all IEPs, including programs administered by other state and local agencies. (Ed. Code, §§ 33301; 56100, subd. (i).)

Under the IDEA, state education agencies such as CDE are responsible for “general supervision,” i.e., ensuring that: 1) IDEA requirements are met; 2) special education programs are supervised and meet the educational standards of the state education agency; and 3) the requirements of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11431, *et seq.*) are met as to homeless children. (20 U.S.C. § 1400(d)(11)(A).) A state education agency may be responsible for the provision of special education if it fails to meet its duty of ensuring that the requirements of the IDEA are met. (See *Gadsby v. Grasmick*

(4th Cir. 1997) 109 F.3d 940, 953; *Kruelle v. New Castle County Sch. Dist.* (3d Cir. 1981) 642 F.2d 687, 696-697.)

IDEA hearings properly include declaratory relief actions regarding residency. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.) Thus, in an IDEA hearing, OAH has jurisdiction to entertain declaratory relief actions regarding which agency is responsible for providing special education to a particular student.

Here, Student alleges in her complaint that it is unclear which entity is responsible for providing Student with A FAPE. Student further alleges that she is now 19 years of age and is not a conserved individual. She requests that OAH determine the “district of residence” for purposes of the provision of FAPE. Student alleges that she was provided IEPs and special education services by LAUSD until 2004, when she became involved in drugs and alcohol. Since 2004, she did not receive any IEPs or education until she was incarcerated in approximately May 2009. At that time, LACOE provided special education services to Student through an IEP. On December 28, 2009, Los Angeles County Department of Mental Health (DMH) recommended that Student be placed in a residential treatment center (RTC) pursuant to an AB3632 assessment. Due to a dispute regarding which agency was responsible to facilitate Student’s transfer to the RTC, a prior due process proceeding resulted in a June 2010 OAH decision that directed LACOE, as Student’s LEA, to implement the IEP team recommendation to place Student in an RTC. LACOE did and, in July, 2010, Student was transported and placed at the RTC in Texas. Student further alleges that LAUSD has not responded to her requests that it assume financial responsibility for the non-mental health services provided to Student at the RTC, and that it is unclear what Student’s current district of residence is.

Student alleges that, because CDE is the state educational agency ultimately responsible for ensuring that all students within the state receive a FAPE, “it is possible that CDE is the agency responsible for providing [Student] with a FAPE.”

In this declaratory relief action regarding which agency is responsible for providing special education to a particular student, CDE is a proper party. LAUSD and LACOE have, in a previous due process matter involving Student, disagreed over whose responsibility she is. According to the allegations of the complaint, they are still in disagreement. Moreover, because LACOE was responsible for Student’s education at some point based on Student’s status in juvenile hall and not on the residency of a parent or guardian, it is unclear how the residency statutes will apply. Thus, at this time, it is still possible CDE may be held responsible for the provision of special education by failing to meet its duty of ensuring that the requirements of the IDEA are met.

ORDER

CDE's Motion to be Dismissed as a Party is denied.

Dated: April 8, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings