

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DENAIR UNIFIED SCHOOL DISTRICT  
AND TURLOCK UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011071075

ORDER DENYING MOTION TO  
DISMISS AS MOOT

On July 29, 2011, Parents on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) against the Denair Unified School District (DUSD). On August 15, 2011, DUSD filed a Notice of Insufficiency (NOI) and Motion to Dismiss (MTD) as to Student's complaint. DUSD's sole ground for the NOI was that Student does not live within the geographical boundaries of DUSD. The Office of Administrative Hearings (OAH) denied DUSD's NOI on August 16, 2011, and stated that OAH would rule on the MTD in a separate order.

On August 18, 2011, Student filed an amended complaint, which added additional facts and Turlock Unified School District (TUSD) as a party. Student's motion to amend the complaint is ruled upon in a separate order.

APPLICABLE LAW

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.)

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

---

<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

guardian resides. The determination of residency under the Individuals with Disabilities Education Act 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.)

## DISCUSSION

DUSD asserts in its MTD that it is not a proper party because it is not the responsible local educational agency because Student resides within the boundaries of TUSD. Student's amended complaint includes additional facts regarding DUSD's legal responsibility to provide Student with a free appropriate public education due to the inter-district transfer between TUSD and DUSD. Because the amended complaint contains additional facts regarding DUSD's purported responsibility, its MTD is moot. Accordingly, DUSD's MTD is denied and DUSD may file a new MTD based on the allegations in the amended complaint.

## ORDER

DUSD's Motion to Dismiss is denied as moot.

Dated: August 24, 2011

/s/

---

PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings