

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT, LONG BEACH
UNIFIED SCHOOL DISTRICT, WEST
SAN GABRIEL VALLEY SELPA AND
LOS ANGELES COUNTY DEPARTMENT
OF EDUCATION.

OAH CASE NO. 2013120327

ORDER DENYING NORWALK-LA
MIRADA UNIFIED SCHOOL
DISTRICT'S MOTION TO DISMISS

On December 6, 2013, Student filed a Due Process Hearing Request (complaint) naming Norwalk-La Mirada Unified School District (Norwalk-La Mirada), Long Beach Unified School District (Long Beach), West San Gabriel Valley SELPA (SELPA) and Los Angeles County Department of Education (LACOE). On December 16, 2013, Norwalk-La Mirada filed a Motion to Dismiss Student's complaint. Student filed a response on December 17, 2013.

Norwalk-La Mirada challenges the complaint on grounds that it fails to allege facts sufficient to find Norwalk-La Mirada responsible for providing Student a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Act (20 U.S.C. § 1400 et seq.) (IDEA) within the two-year statute of limitations period preceding Student's complaint. Specifically, Norwalk La Mirada contends that Student was required to, but did not, plead facts sufficient to establish that, at any time during the relevant period, Student was a resident of Norwalk La-Mirada enrolled in a Norwalk La-Mirada school or program. For the reasons discussed below, Norwalk La-Mirada's motion to dismiss is denied.

APPLICABLE LAW AND DISCUSSION

The IDEA and its state law counterparts do not set forth a procedure for dismissing IDEA-related claims on the merits without first affording the petitioning party a chance to develop a record at hearing. The Administrative Procedures Act (Gov. Code, § 11340 et seq.) requires that parties appearing before the OAH receive notice and an opportunity to be heard, including the opportunity to present and rebut evidence. (Gov. Code, § 11425.10, subd. (a)(1).) However, at a prehearing conference, an administrative law judge (ALJ) may address such matters "as shall promote the orderly and prompt conduct of the hearing" (Gov.

Code, § 11511.5, subd. (b)(12)), and at hearing, an ALJ may take action “to promote due process or the orderly conduct of the Hearing.” (Cal. Code Regs., tit. 1, § 1030, subd. (e)(3).) Also, as an administrative tribunal, the OAH has jurisdiction to determine the extent of its own jurisdiction and power to act. (See *People v. Williams* (2005) 35 Cal. 4th 817, 824.)

Accordingly, OAH may dismiss a matter in its entirety, or one or more claims, where it is evident from the face of the complaint that the alleged issues fall outside of OAH jurisdiction or the pleaded facts cannot sustain a claim. Such circumstances may include, among other things, complaints that assert civil rights claims or claims seeking enforcement of a settlement agreement, or that assert claims against an entity that cannot be legally responsible for providing special education or related services under the facts alleged.

To protect the rights of children and their parents and ensure that all children with disabilities have available to them a FAPE, the IDEA requires states to establish and maintain procedures that include the opportunity 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 [FAPE] to such child.” (20 U.S.C. § 1415(b)(6) (A).) The Education Code grants parents, guardians and the public agency involved in the education of the child the right to present a due process complaint involving: a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child or 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. (Ed. Code, § 56501, subd. (a)(1)–(4).) The jurisdiction of OAH is limited to these enumerated circumstances. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to a student’s parent or guardian, to the student under certain conditions, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) The “public agency” may be “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 IDEA leaves it to each state to establish mechanisms for determining which of the state’s public agencies is responsible for providing special education services to a particular student, and procedures for resolving interagency disputes concerning financial responsibility. (20 U.S.C. § 1412(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) Under California law, the public agency responsible for providing education to a child between the ages of six and 18 generally is the school district in which the child’s parent or legal guardian resides, (Ed. Code §48200), although certain responsibilities, such as the provision of special education services in juvenile court schools, may be regionalized by local plans and administered by county offices of education (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 et seq.).

Here, it is not evident from the face of the complaint that Norwalk-La Mirada cannot be legally responsible for providing special education or related services. The complaint alleges the following: Student was a fourteen year-old ninth grade student eligible for special education due to emotional disturbance. Student's father (Parent) resided in Norwalk within Norwalk-La Mirada's boundaries, and Student herself attended Norwalk-La Mirada schools from 2003 through the 2009-2010 school year. Due to escalating behavioral issues, Student was placed in a succession of residential treatment facilities outside of the boundaries of Norwalk-La Mirada from the summer of 2010 to February 2013. Student returned home to Norwalk in February 2013, and Norwalk-La Mirada and LACOE subsequently held an individualized education program (IEP) meeting in February 2013 at which Student was offered, and accepted, placement at the Pace School operated by LACOE, with counseling as a related service. In May 2013, Norwalk-La Mirada and LACOE held another IEP meeting and confirmed Student's continued placement at the Pace School. Student contends that the placement and services offered Student at the February and May 2013 IEP meetings were not appropriate and denied Student a FAPE.

Thus, the complaint alleges that, within the limitations period, Norwalk-La Mirada was a public agency responsible for providing education to Student, based on Parent's residency within the district's boundaries. Also, based on its participation in Student's IEP meetings in February and May 2013 at which Student was offered placement at Pace School with related services, Norwalk-LA Mirada is alleged to be a public agency involved in decisions regarding Student that Student contends denied her a FAPE. These allegations are sufficient to sustain a claim by Student against Norwalk-La Mirada.

In its motion to dismiss, Norwalk-La Mirada suggests that, contrary to Student's allegations, it did not participate in the February and May 2013 IEP meetings that Student contends denied her a FAPE, stating, "LACOE held an IEP meeting and offered Student a placement at PACE." This apparent factual dispute regarding Norwalk-La Mirada's participation in challenged IEP meetings cannot be resolved in a motion to dismiss.

Norwalk-La Mirada also cites 34 Code of Federal Regulations part 300.323(e) (1) & (2) (2006) for the proposition that, on the face of the complaint, Norwalk- La Mirada had no obligation to provide Student a FAPE when Student returned to Norwalk-La Mirada in February 2013 from a residential treatment facility outside the district, because Student did not enroll in a Norwalk La-Mirada school or program at that time. However, Education Code section 56325, subd. (a)(1), which governs the obligation of a receiving school district to provide FAPE to a transferring special education student, does not require enrollment as a condition to the provision of FAPE by the receiving district, and such an interpretation would be inappropriate where, as here, the district allegedly knew of Student's presence within its boundaries and participated in an IEP to determine Student's placement and related services.

It is not necessary to reach Norwalk-La Mirada's contention that Student failed to satisfy the residency requirement for school attendance in Norwalk La-Mirada because she was not placed within the boundaries of Norwalk-La Mirada in a regularly established licensed children's institution (Ed. Code, § 48204). Norwalk-La Mirada admits that Student

resided in the District from February 1, 2013 to August 13, 2013. This period encompassed, at least, the contested IEP meeting in February 2013 pursuant to which Student subsequently enrolled in the Pace School operated by LACOE, and Norwalk-La Mirada's motion to dismiss the complaint on grounds that Student failed to allege facts demonstrating residency is therefore denied.

ORDER

Norwalk-La Mirada's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: December 27, 2013

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings