BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. KING CITY UNION SCHOOL DISTRICT AND GREENFIELD UNION SCHOOL DISTRICT.	OAH CASE NO. 2013060737 ORDER DENYING MOTION TO DISMISS

On June 17, 2013, Student filed a Request for Due Process Hearing (complaint), naming King City Union School District (King City) and Greenfield Union School District (Greenfield) as respondents. Student alleged that he had a scheduled IEP meeting at "Gabilon School District" on September 20, 2011, and another meeting on an unspecified date, where it appears from the allegations respondents did not agree with Student's parents that he should not be receiving special education services. In the complaint form, Student's parent states that his current district of residence is the "Greenfield district." He names as parties two schools, the "Gabilon School" in King City and "Cesar Chavez Elementary School" in Greenfield. Within the body of the complaint, Student mentioned names of individuals his parent met or spoke with but, aside from the "Gabilon School District," did not otherwise reference the respondents in the body of his complaint.

On June 19, 2013, King City moved to dismiss itself from Student's complaint on the ground that Student does not now, and never did, reside within its boundaries, and never attended its schools during the relevant time period set forth in the complaint. King City's motion was supported by a signed letter from its coordinator of special education.

Student did not respond to King City's motion.

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 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.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc…..), special education law does not provide for a summary judgment procedure. In other words, for OAH to grant King City's motion to dismiss as an incorrect party on the ground that Student did not reside in the school district, or attend its schools, during the relevant time period, the facts supporting King City's motion must be clearly set forth in Student's complaint, and not otherwise subject to dispute.

ANALYSIS

Here, King City's motion cannot be granted at this stage in the proceeding because it is unclear from the face of the pleadings whether or not King City is the responsible school district. Student has the burden of proof regarding his residency, and can, and should, voluntarily dismiss King City at any time if King City is not a proper party. Student shall be required to establish his residency, and the school district(s) responsible for providing him with special education services at hearing. The ALJ has the authority to sanction Student if he insists on moving forward with the complaint against an improper party and causes that party to expend staff time and attorneys' fees. (Govt. Code, §11455.30, subd. (a).)

At this time, however, the unverified representation of King City's coordinator does not provide a sufficient basis for its motion. Accordingly, King City's motion to dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: July 01, 2013

/s/

EILEEN COHN
Administrative Law Judge
Office of Administrative Hearings