BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CORONADO UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020663 ORDER DENYING MOTION TO DISMISS

On February 19, 2013, Student filed a Request for Due Process Hearing[1] (compliant) against the Coronado Unified School District (District).

On February 22, 2013, District filed a motion to dismiss Student's complaint (motion) on the ground that it is not the responsible local educational agency as Student does not live within the geographical boundaries of District. On February 25, 2013, Office of Administrative Hearings (OAH) received Student's response opposing District's motion.

APPLICABLE LAW

The due process hearing procedures for special education 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

[1] 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).

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 … 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.)

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.

DISCUSSION

Student is a child with disability under the IDEA. Based on the available records, at one time, District had provided special education services to Student under an individualized education program (IEP). In his complaint, Student raises three issues. Issue One alleges that District denied Student a FAPE because District failed to timely complete his IEP. In Issue Two, Student contends that District denied him a FAPE because it failed to timely develop accurate present levels of performance. Student's Issue Three challenges District's termination of Student's special education services due to a residency dispute.

District filed this motion to dismiss contending that it is not the local educational agency responsible for providing special education and related services to Student. According to District, Student does not or no longer lives within its geographical boundaries, and as such, District argues that Student's case should be dismissed because OAH lacks the jurisdiction to determine residence.

OAH has jurisdiction to entertain issues relating to identification, evaluation, or educational placement of the child, or the provision of a FAPE to Student. District is incorrect that Student's complaint solely seeks residency determination. As discussed above Student's complaint raises three issues alleging a denial of FAPE due to certain acts by District, which Student contends violated his rights under the IDEA. These issues clearly fall within the matters identified in the IDEA for which Student may file a request for a due process hearing before OAH.

District's position herein, and its argument, that OAH lack the jurisdiction to hear this case is not supported. That is, while residency may be an issue in this case, and District may have a defense to Student's case based on residency, Student has not come to OAH just to determine residency. Also, because Student's case is not facially outside of OAH jurisdiction, District's motion to dismiss based on residency dispute between the parties appears premature. The proper avenue for resolving factual disputes, including residence, is

in a hearing. Accordingly, District's motion to dismiss Student's complaint without a hearing must be denied.

ORDER

1. District's motion to dismiss is denied.

2. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: March 1, 2013

/s/
ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings