

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

COURT-APPOINTED INDEPENDENT
COUNSEL ON BEHALF OF STUDENT,

v.

SACRAMENTO COUNTY OFFICE OF
EDUCATION, AND SACRAMENTO
CITY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012120710

ORDER DENYING MOTION TO
DISMISS SACRAMENTO COUNTY
OFFICE OF EDUCATION

On December 17, 2012, Student, a 16-year-old ward of the Sacramento County Juvenile Court who is currently placed in an out-of-state residential treatment facility, filed a Due Process Hearing Request (complaint) and a Stay-Put Motion with the Office of Administrative Hearings (OAH) naming the Sacramento City Unified School District (SCUSD), the Sacramento County Office of Education (SCOE), and the California Department of Education (CDE), as respondents. The complaint alleged that SCOE had been ordered to fund Student's placement by the juvenile court in 2010, but had given Student notice of its intent to stop funding Student's placement following the Court of Appeals' reversal of that order in November 2012. Student sought a determination of which agency would be responsible going forward for providing Student's special education, and other relief. Student's stay-put motion sought an order directing one or more of the respondents to pay for Student's continued placement at the out-of-state residential treatment facility while this matter is adjudicated.

On December 21, 2012, SCOE filed an Opposition to Student's stay-put motion, and on January 2, 2013 SCOE filed a Motion to Dismiss SCOE entirely from this matter on grounds that SCOE could not be responsible under applicable law for funding Student's placement, or in the alternative, to dismiss for lack of jurisdiction Student's claims: (i) that SCOE and CDE denied Student a free appropriate public education (FAPE) as a result of the procedural violation of failing to provide SCUSD adequate notice that Student's surrogate parent resided within SCUSD and that SCUSD might therefore be responsible for funding student's placement; (ii) that OAH as a remedy should order respondents to appoint a surrogate parent who does not have a conflict of interest or bias; and (iii) that OAH as a remedy should order respondents to fund the attendance of Student's special education legal counsel at all future individualized education program (IEP) meetings.¹ The latter two

¹ SCOE's filing on January 2, 2013 also included a Notice of Insufficiency that was rejected on procedural grounds in OAH's January 3, 2013 order that deemed the complaint sufficient.

requests for dismissal will be treated herein as motions to strike improper proposed remedies. Student and SCUSD opposed SCOE's motion to dismiss SCOE from this matter, and Student opposed SCOE's alternative motion to dismiss certain claims and proposed remedies.

On January 3, 2013, OAH granted Student's stay-put motion and ordered SCUSD to continue to fund the out-of-state placement called for in student's last implemented IEP, which was developed by SCUSD on November 8, 2012.

APPLICABLE LAW AND DISCUSSION

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.) Similarly, the Code of Federal Regulations provides that the term "public agency" encompasses state educational agencies (SEAs) such as CDE, as well as local educational agencies (LEAs) such as SCOE and SCUSD, "and any other political subdivisions of the State that are responsible for providing education to children with disabilities." (34 C.F.R. § 300.33 (2012).)

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. § 1400(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.). For purposes of determining residency, the term “parent” includes a surrogate parent appointed by a LEA, or a responsible adult appointed by a juvenile court. (Ed. Code § 56028, subd. (a)(3), (5).) The OAH may determine the residency of a parent or guardian in a due process proceeding and thereby establish the public agency responsible for the student’s special education. (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.)

The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) 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.

Here, SCOE’s motion to dismiss SCOE from this matter entirely must be denied because the complaint alleges that SCOE was the public agency involved in any decisions regarding Student from June 2009 to the date of the complaint, and as such is responsible for various denials of FAPE alleged in the complaint, including several that SCOE did not address in its motion to dismiss. The complaint alleges that SCOE denied Student a FAPE by: (i) refusing to fund Student’s placement at the out-of-state residential treatment facility; (ii) failing to offer and have available an appropriate IEP placement in the least restrictive environment (LRE); (iii) refusing to convene an IEP team meeting to ensure continued funding of Student’s IEP placement; (iv) failing to provide adequate and timely notice of SCOE’s intent to terminate funding of Student’s IEP placement; (v) appointing a surrogate parent who has a conflict of interest in advocating for Student’s special education needs; (vi)

failing to develop a clear written IEP; and (vii) failing to provide SCUSD with adequate notice that the surrogate parent resided within SCUSD.²

Of the above seven alleged denials of FAPE, SCOE addressed only two in its motion to dismiss, namely, SCOE's alleged failure to fund Student's placement and SCOE's alleged failure to provide notice of the surrogate parent's residence. Even if those claims were dismissed, there would be no grounds to dismiss SCOE entirely from the action in light of the five remaining unaddressed claims, and SCOE's motion to do so is therefore denied.

SCOE's motion to dismiss Student's claims that SCOE may be responsible for funding Student's placement, and that SCOE denied Student a FAPE as a result of the alleged procedural violation of failing to provide SCUSD adequate notice that Student's surrogate parent resided within SCUSD, also must be denied because the issues raised are within OAH's jurisdiction to decide any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to such child, and the claims involve factual issues that must be resolved at hearing. SCOE itself contended in its opposition to Student's stay-put motion that the issue of agency responsibility is highly contested, and it urged that determination of the responsible agency should be decided following the presentation of evidence at hearing. Factual issues to be resolved at hearing include, at least, the identity and residency of Student's surrogate parent and responsible adult, SCOE's conduct in the placement of Student, and the involvement and actions of the juvenile court, and the effect of the actions of the parties and the juvenile court on the provision of FAPE to student.

Finally, SCOE's motion to dismiss for lack of jurisdiction certain of Student's proposed remedies is denied. Student's proposed remedies of an order directing respondents to appoint a surrogate parent who does not have a conflict of interest or bias, and an order directing respondents to fund the attendance of Student's special education legal counsel at all future individualized education program (IEP) meetings, both fall within OAH's broad jurisdiction to craft "appropriate relief" for a party. Appropriate relief means "relief designed to ensure that the student is appropriately educated within the meaning of the IDEA." (*Student W. v. Puyallup School District* (1994) 31 F.3d 1489, 1497.) Accordingly, because any relief ultimately granted is within the sound discretion of the ALJ based on the facts developed at hearing, including the equities, the request to strike remedies must be denied.

² SCOE cites no authority, and we can find none, in support of its argument that SCOE was not responsible under the IDEA as a matter of law, such that it is entitled to prehearing dismissal, for its conduct in providing Student special education service pursuant to juvenile court order while its appeal of that order was pending.

ORDER

SCOE's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: February 1, 2013

/s/

ROBERT MARTIN

Office of Administrative Hearings