

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015030906

ORDER DENYING MOTION TO
DISMISS ISSUES IN COMPLAINT

On March 19, 2015, Parent filed a due process hearing complaint naming Oakland Unified School District as respondent. The complaint alleged, among other issues, that Oakland failed to offer Student a free appropriate public education during IEP team meetings held during both the 2013-2014 and 2014-2015 school years. On April 29, 2015, Oakland filed a motion to dismiss FAPE claims asserting that Student is s a parentally placed private school student who resided within Union City's boundaries and , therefore, it was not obligated to offer or provide Student a FAPE. On April 30, 2015, Parent submitted an opposition to the motion to dismiss.¹ In the opposition Parent does not expressly state when she resided in Oakland and when she resided in Union City.

APPLICABLE LAW

The Office of Administrative Hearings 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, and incorrect parties), special education law does not provide for a summary judgment or summary adjudication procedure.

The Individuals with Disabilities Education Act (IDEA) imposes a duty on local education agencies to locate, identify, and assess students with disabilities including students placed by their parents in private schools located within the LEA's boundaries. (Ed. Code § 56170; 34 C.F.R. § 300.131) Generally, parentally placed private school students eligible for special education and related services have an opportunity for equitable participation in the services funded that the LEA has determined to make available to its population of

¹ In the opposition to Oakland's motion, Parent requests that OAH assist her in drafting her complaint. A mediator will be assigned to assist Parent in response to her request, and, if Parent chooses, she may submit a motion to amend her complaint.

parentally-placed private school children with disabilities as opposed to the right to receive some or all of the special education and related services that a child would receive if enrolled in public school. (*see* 20 U.S.C. § 1412(a)(10)(A)(i)(I); 34 C.F.R. §§ 300.132(a), 300.137(b), and 300.137(a))

Regarding residency, 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.)

DISCUSSION

Here, Oakland's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead raises an allegation that requires a ruling on the merits. Moreover, Oakland has not established and Student has not agreed that he was not a resident of Oakland during the time period at issue in the case. That is a legal determination to be made based on the evidence presented during the hearing in this case. Oakland may assert Student's residency as an affirmative defense in this case. However, the motion to dismiss issues related to FAPE is denied at this time.

IT IS SO ORDERED.

DATE: July 28, 2015

/s/

JOY REDMON

Administrative Law Judge

Office of Administrative Hearings