

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100364

ORDER DENYING MOTION TO DISMISS
AND DENYING REQUEST TO BIFURCATE

NOVEMBER 19, 2021

On October 13, 2021, Student filed a Request for Due Process Hearing, complaint, with the Office of Administrative Hearings, also called OAH, naming Hesperia Unified School District as respondent. On November 15, 2021, Hesperia filed a Motion to Dismiss, alleging that Student does not reside in the Hesperia Unified School District, did not plead residency in her complaint, and therefore is not entitled to a remedy in this action, rendering the request for due process moot. Hesperia attaches documents it alleges establishes that Student does not reside in the Hesperia school district. Hesperia alternatively seeks bifurcation of the issue of residency should OAH decline to dismiss the complaint.

On November 17, 2021, Student filed a response. Student asserts that the complaint seeks remedies for a time the Student resided in the district and that the district was responsible for providing a free, appropriate public education or FAPE while Student attended a district school. Student argues the request for due process is not moot as remedies could be available based on proof of eligibility.

MOTION TO DISMISS

Minimal pleading standards apply to requests for due process pursuant to the Individuals with Disabilities Education Act. (*Schaffer ex rel. Schaffer v. Weast*, (2005) 546 U.S. 49, 54 [126 S.Ct. 528, 163 L.Ed.2d 387].) There is no summary judgment process in special education cases. Documents asserted as evidence of Student's residence status must be considered in the course of an evidentiary hearing. A case is moot "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. (*R. E. B. v. Department of Education* (9th Cir. 2019) 770 Fed.Appx. 796, 797.)

The IDEA creates a comprehensive framework for the provision of educational services to children with disabilities. Within the IDEA's framework in California, local education agencies under the responsibility of the State Department of Education are tasked with furnishing special education services to all eligible children at no cost to their parents or guardians. (*B.H. v. Manhattan Beach Unified School Dist.*, (2019) 35 Cal.App.5th, 563, 567-568, *citing*, 20 U.S.C §§ 1401(9), (29); and §1412(a)(1)(A); Ed. Code, §§ 56000, et. seq., esp. § 56040, subd. (a).) Generally, under California law, the school district in which the parents of the disabled student reside is responsible for preparing an "individualized education plan," referred to as an "IEP," for the disabled child under the IDEA, and for paying for the costs of implementing that plan. However, there are exceptions to that rule. (*B.H. v. Manhattan Beach*, *supra*, 35 Cal.App.5th at 568 *citing*, Ed. Code, §§ 48200, 56028.)

DISCUSSION

Hesperia asserts that Student's request for due process is moot because Student does not reside in its district. As a result, even if Student could demonstrate that she should have been eligible for services and was denied needed services, Hesperia would not be the entity responsible. As a result, Student is unable to secure a remedy via this request for due process and it should be dismissed as moot.

Student argues that she attended a district school during the 2019-2020 and 2020-2021 school years and is alleging claims for those school years. Hesperia alleges Student was never a resident of the district and was never entitled by any other means to attend Hesperia schools. This is a question of fact that would require resolution at hearing.

Hesperia did not file a Notice of Insufficiency asserting more specific facts were required, including facts establishing that Student resided in the district during the dates at issue. (20 U.S.C. § 1415 (c)(2)(A); Ed. Code § 56502, subd. (d)(1).) A ruling that a complaint is insufficient generally affords Student the opportunity to amend the complaint and add those facts necessary to meet the notice pleading standard. The IDEA and California state law specifically lay out the procedure by which the failure to state facts in a complaint can be remedied. Absent a timely request for a ruling of insufficiency, the complaint is deemed sufficient and proceeds to hearing as is. (20 U.S.C. § 1415 (c)(2)(A); Ed. Code § 56502 subd. (d)(1).) As questions of fact governing Student's entitlement to relief remain to be determined, and there is no summary judgment in special education cases, Student's request for due process is not moot and not subject to dismissal.

MOTION TO BIFURCATE

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at trial. The Administrative Law Judge has the discretion to bifurcate an issue raised in the pleadings, and hear it in a separate hearing, if doing so would be convenient, would result in judicial economy or would avoid prejudice to a party. (Gov. Code, §11507.3, subd. (b).) Generally, the Office of Administrative Hearings (OAH) will bifurcate a hearing where the resolution of the issue to be determined in the first hearing will determine whether the remainder of a hearing will be necessary.

In this case, Hesperia asserts, without persuasive or binding authority, that resolution of the residency claim is dispositive. Prior OAH special education decisions and orders are not precedential authority. (Govt. Code § 11425.60; tit. 5, Cal Code Regs, § 3085.) Hesperia provides no authority for the proposition that a local educational agency is never responsible for providing a free, appropriate public education or FAPE to a Student who does not reside in the school district or who does not have permission to attend an out-of-area school. However, regardless of the lack of dispositive authority at this juncture, the question of Student's entitlement to services from Hesperia during the period from 2019 forward, would not be fully resolved at a bifurcated hearing addressing only the issue of residency. As such, bifurcation would not serve judicial economy or avoid prejudice to a party in these proceedings.

ORDER

1. Hesperia's Motion to Dismiss is denied.
2. Hesperia's Motion to Bifurcate is denied.
3. The case shall proceed as scheduled.

IT IS SO ORDERED.

Penelope S. Pahl

Penelope S. Pahl

Administrative Law Judge

Office of Administrative Hearings