

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110690

ORDER DIMISSING CONTRA COSTA COUNTY OFFICE OF
EDUCATION AS A PARTY

FEBRUARY 18, 2022

On November 23, 2021, Student filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Pleasanton Unified School District and Contra Costa County Office of Education. On January 3, 2022, OAH granted Student's motion to amend the complaint.

On February 10, 2022, Contra Costa County Office of Education, called CCCOE, filed a motion to be dismissed as a party in this matter asserting that it is not the responsible party for Student's free appropriate public education, called FAPE, under the parties' March 2021 settlement agreement and subsequent individual education programs. Thus, CCCOE maintained, it should be dismissed as a party as to Student's

issues A and B in the first amended complaint. Additionally, CCCOE argued that the OAH lacks jurisdiction to hear Student's contract claims and thus, Student's issue C in the first amended complaint should be dismissed in its entirety.

Student filed opposition on February 14, 2022 and had the opportunity to argue the motion at the February 14, 2022 prehearing conference. Student maintained in the opposition and through argument that both Pleasanton and CCCOE are decision makers in Student's education and can be found jointly and severally liable for Student's education. Further, the terms of the March 2021 settlement agreement show that CCCOE's decision making directly effects Student's education as to the issues raised in Student's first amended complaint. Thus, it argued, CCCOE is a necessary party to this action, and it should not be dismissed. In support of this proposition, Student cited nine separate excerpts from the March 2021 settlement agreement in its opposition. Student also argued that CCCOE implements Student's education and thus can be found liable for the FAPE violations in this matter, and the determination of the proper local educational agency requires an evidentiary hearing on the merits and not through a motion to dismiss. Student does not oppose dismissing Student's issue C in its entirety. Pleasanton Unified School District, called Pleasanton, did not file a response to CCCOE's motion to dismiss.

On February 14, 2022, at the prehearing conference, the undersigned dismissed Student's issue C in the first amended complaint for lack of jurisdiction and it will not be addressed further in this order. (See Order Following Prehearing Conference dated February 17, 2022.) On February 15, 2022, the undersigned requested briefing due by 8:00 AM on February 18, 2022, regarding preliminary jurisdictional issue related to the settlement agreement. On February 18, 2022, Student, Pleasanton Unified School District, and CCCOE submitted their briefs.

Parents have 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 public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 56140 sets forth the role of county offices of education but does not render a county office of education individually responsible to provide FAPE or make education decisions about a student. (Id.) Although a county office of education may fit the definition of “public agency” set forth in the Individuals with Disabilities Education Act if it is providing special education or related services, to be a proper party for a due process hearing, the county office of education must also be involved in making decisions regarding the student at issue.

Although special education law does not provide a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, including when the party filing the complaint has failed to allege facts that the named entity is a public agency involved in any decision regarding a student and therefore legally responsible for providing special education and related services.

Here, the sole issue is whether CCCOE is a proper party, a matter that can be proven without a formal summary judgment procedure. Student cites *Union School Dist. v. Smith* (Union) (9th Cir. 1994) 15 F.3d 1519, in support of the position that an evidentiary hearing is required to determine the local educational agency when there is a dispute as to the responsible local educational agency. *Union*, however, does not stand for the proposition that a proper party must be determined in a due process hearing. In that case, there was a question of fact as to Student's residence which was adjudicated through a due process hearing. In *Union*, the hearing officer and district court found that the parents maintained their permanent residence in San Jose and maintained a secondary temporary residence in Los Angeles for the sole purpose of being able to commute daily to the student's educational program. The Ninth Circuit rejected arguments that the physical location of a child during the school week determines the residency of that child, and found that California Education Code provisions addressing a school district's responsibility to a child do not relieve it from its responsibility to disabled children who reside in the district and receive their free appropriate education outside the district. (*Ibid.*) Because there is no underlying factual dispute as to Student's residency, and no exceptions to the residency requirements in this matter, the undersigned can resolve this matter on its legal merits.

Additionally, OAH has the authority to interpret settlement agreements for purposes of adjudicating claims that allege a student was denied a FAPE. In *Pedraza v. Alameda Unified School Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that OAH has jurisdiction to adjudicate claims that allege a student was denied a free appropriate public education as a result of the violation of a mediated settlement agreement. However, a breach of a mediated settlement agreement, that does not specifically indicate the agreement constituted FAPE, should

be addressed by the California Department of Education's compliance complaint procedure.

A FAPE means special education and related services that are available to an eligible child that meets state educational standards at no charge to the parent or guardian. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17 (2006).) Parents and school personnel develop an IEP for an eligible student based upon state law and the IDEA. (20 U.S.C. §§ 1401(14), 1414(d)(1); and see Ed. Code, §§ 56031, 56032, 56341, 56345, subd. (a), and 56363 subd. (a); 34 C.F.R. §§ 300.320 (2007), 300.321 (2006), and 300.501 (2006).)

In general, a child eligible for special education must be provided access to specialized instruction and related services which are individually designed to provide educational benefit through an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 201-204; *Endrew F. v. Douglas County School Dist. RE-1* (2017) 580 U.S. ____ [137 S.Ct. 988, 1000].)

The IDEA requires a state to provide a FAPE to children with disabilities to those children "residing within the State." (20 U.S.C. § 1414(a)(1)(A).) The IDEA leaves it to each state to decide how it will allocate among its various state and local public agencies the responsibility for funding special education programs and providing a free and appropriate public education. (*Los Angeles Unified School Dist. v. Garcia* (2013) 58 Cal.4th 175, 184.)

California law places responsibility for providing special education to eligible children on the local education agency, usually the school district in which the parents of the child reside. (See, e.g., Ed. Code §§ 48200, 56300, 56340 [describing local educational agency responsibilities], 56344, subd. (c).) Under Education Code section

48200, a school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district. (Ed. Code § 48200 determines the local educational agency responsible for providing a special education program[.]) The law also contemplates that, when a parent disputes the educational services provided to the special needs child, the proper party to the due process hearing request is the local education agency. (See, e.g., Ed. Code § 56502, subd. (d)(2)(B) [local education agency's response to due process complaint].)

Here, it is undisputed, and Student's first amended complaint shows Student resides within Pleasanton's residency boundaries. It is also undisputed that Student was placed in the Mauzy School, a program operated by CCCOE, outside of Pleasanton's residency boundaries and county. Student attends Mauzy through an agreement between Pleasanton, the district of residence, and CCCOE. Through Student's residence, Pleasanton Unified School District is Student's local education agency.

There are exceptions to the requirement that the residence of the parent determines what LEA is responsible for a child's FAPE. (Ed. Code, §§ 48204, 48645.2, 56325, subd. (c).) None of those exceptions apply to this matter and Student does not contend any apply.

Student provided no legal authority establishing that two public entities can be "jointly and severally" responsible for FAPE. Rather, Student cites the parties March 2021 settlement agreement and a memorandum of understanding between Pleasanton and CCCOE and asserts that they call into question the local education agency responsible and asserts joint and severally liable between Pleasanton and CCCOE. However, there is nothing in the parties' March 2021 settlement agreement or Pleasanton and CCCOE's memorandum of understanding that could change the status

of Pleasanton as Student's local educational agency and its responsibility to a disabled child who resides within its school district. And Student did not argue any exception to the general residency rule through either the settlement agreement or memorandum of understanding.

In fact, the settlement agreement and memorandum of understanding only bolster the parties' understanding that Pleasanton is Student's local educational agency. The March 2021 settlement agreement that accompanied CCCOE's motion to dismiss and Student's opposition sets forth Pleasanton as "...ultimately responsible for the provision of Student's FAPE..." (See CCCOE's Exhibit B to Motion to Dismiss, Agreement at p. 4; Student's Exhibit 3, Agreement at p.4.) Thus, the settlement agreement makes clear that Parents were aware that Pleasanton and not CCCOE is responsible for Student's FAPE.

Other documents also support that Student's district of residence is Student's local educational agency for FAPE. Student's August 2019 Individualized Education Program, referenced in the agreement, and attached to CCCOE's motion to dismiss as Exhibit C, at page 1, designates Pleasanton as the "District of Special Education Accountability." Subsequent signed and unsigned individualized education plans, attached as Exhibits D, E, and F, at p. 1, to CCCOE's motion to dismiss designate Pleasanton as the "District of Special Education Accountability."

Further, Student attached as Exhibit 2 the memorandum of understanding between the Contra Costa County Special Education Local Plan Area, which includes CCCOE, and the Tri-Valley Special Education Local Plan Area which includes Pleasanton. The memorandum of understanding states that the local education agency where student resides is responsible for all due process hearing complaints, and CCCOE as the agency that provides the special education and related services to the student.

Here, CCCOE provides special education and related services to Student through a contract with Pleasanton, the school district of residence. This does not make CCCOE responsible for Student's FAPE. PUSD and CCCOE's memorandum of understanding is a contract between them and not with Student. Should PUSD be found liable for any FAPE violations in this matter, PUSD and CCCOE can separately agree on apportionment based on their own agreement.

Further, Student neither provided legal authority demonstrating that providing contractual services to a Student by a provider who is a public agency establishes that public agency as the Student's local education agency having a duty to provide FAPE to the Student nor that a separate contract between the two respondents somehow alters Pleasanton's responsibility as the local education agency for Student.

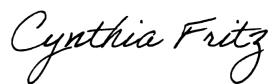
Moreover, Student failed to allege any specific facts in its first amended complaint that CCCOE had any independent decision-making power or involved in any decisions regarding Student's educational program. CCCOE is lumped in with Pleasanton in Student's allegations without specificity. Student attempts to allege this in its opposition to the motion to dismiss by arguing that CCCOE implements Student's special education and related services and thus is a necessary party and could be found jointly and severally liable because of its role as a service provider in Student's education. Student's arguments were unpersuasive.

Here, there is no underlying dispute that Pleasanton Unified School District is Student's district of residence. The parties' March 2021 settlement agreement and the memorandum of understanding between Pleasanton and CCCOE do not change this fact, and do not change that Pleasanton is the ultimate decision maker in Student's FAPE. The documentation attached to both CCCOE's motion to dismiss and Student's opposition further support this contention. Student failed to allege any residency

exceptions to the residency rule. Thus, CCCOE proved that it is not the responsible local education agency to Student and not responsible for Student's FAPE. Accordingly, CCCOE is dismissed as a party in this action.

ORDER

1. CCCOE's motion to dismiss is granted.
2. CCCOE is dismissed as a party in this matter.
3. The matter shall proceed as scheduled as to Pleasanton Unified School District.

A handwritten signature in cursive script that reads "Cynthia Fritz".

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings