BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FORTUNA UNION HIGH SCHOOL DISTRICT; KELSEYVILLE UNIFIED SCHOOL DISTRICT AND KONACTI UNIFIED SCHOOL DISTRICT.	OAH Case No. 2014080602 ORDER DENYING MOTION TO DISMISS FORTUNA UNION HIGH SCHOOL DISTRICT AND KELSEYVILLE UNIFIED SCHOOL DISTRICT AND GRANTING MOTION TO DISMISS KONACTI UNIFIED SCHOOL DISTRICT

On December 2, 2014, a decision was rendered in this bifurcated matter holding that, at all times relevant, Student has been a resident of Fortuna Union High School District. On December 10, 2014, all three districts filed a joint motion to dismiss. Fortuna moved to dismiss all claims occurring prior to May 21, 2014, when it claims that an individualized education plan was first developed for Student. Konacti and Kelseyville asked for dismissal because Student has not been a resident of these districts during the relevant time period. Student opposed the motions to dismiss.

FACTUAL FINDINGS[1]

Student is a 21-year-old man who has been eligible for special education services pursuant to the Individuals with Disabilities Education Act since November 14, 1997, under the eligibility category of autism. Student has not been legally conserved. Mother has lived in Fortuna, California, at all relevant time periods.

Prior to Student's 18th birthday, he was privately placed at College Hospital in Cerritos, California, from September 2010 until he turned 18 years old on October 31, 2011. The school district in which College Hospital was located provided Student with his special education services.

When Student turned 18 years old, he moved to Kelseyville, California, into a supported living situation. This placement was voluntary and not an agency placement

[1] These factual findings are identical to the factual findings in the bifurcated residency decision issued in this matter on December 2, 2014, with the exception of the IEP date of May 24, 2014.

pursuant to Education Code section 48204, subdivision (a)(1). At no time after Student's 18th birthday was he placed in a licensed children's institution, been a foster child, been subject to an inter-district transfer permit, been emancipated, been in the home of a caregiving adult with a caregiver affidavit, or resided in a state hospital.

Student applied for and received special education and related services from Kelseyville beginning shortly after he moved to Kelseyville until March 24, 2014. On this date, Student moved to a new residence within the boundaries of Konacti. Konacti referred Student back to Fortuna, based upon its determination that Student was a resident of Fortuna. Konacti has never provided Student with special education or held an IEP team meeting for Student. Student enrolled in Fortuna and was offered an IEP placement on May 21, 2014, located in the city of Fortuna. Student continues to live in Konacti, which is located a substantial distance from Fortuna.

Fortuna's Motion to Dismiss

Fortuna asked that all claims prior to May 21, 2014, be dismissed because Student did not contact Fortuna and complete enrollment paperwork until May 2014. Student has been a resident of Fortuna at all relevant times, as determined in the bifurcated decision issued on December 2, 2014.

Although 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 procedure. Here, Fortuna's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, Fortuna's motion is denied.

Kelseyville's and Konacti's Motion to Dismiss

Kelseyville and Konacti both asked to be dismissed from this matter because during all relevant time periods, Student has been a resident of Fortuna. Kelseyville and Konacti both argued that residency alone controls whether or not they are proper parties to this action.

APPLICABLE LAW

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).) 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.)

DISCUSSION

Generally, the school district of residence is required to serve a student identified as eligible for special education (Ed. Code, §48200 et.seq.). Fortuna has been determined to be Student's district of residence and, as such has an ongoing obligation to serve Student, subject to Student's ongoing residency and eligibility for special education,

However, the question here is not whether Kelseyville has an ongoing obligation to serve Student, but whether Kelseyville is a proper party to this administrative hearing for claims during a time period Kelseyville actually served Student. Kelseyville provided Student with special education and related services pursuant to IEP's from November 2011 through March 2014. Kelseyville developed the IEP's for Student, provided special education and related services to Student and made all determinations regarding the provision of a free appropriate public education to Student during that time period. Therefore, Kelseyville is a proper party to this action as a public agency involved in "any decisions" regarding a student. Kelseyville's argument that Student's residency in Fortuna requires its dismissal from this case did not address situations where a district that is not a student's district of residence actually serves a Student, as Kelseyville did in this matter. The special education due process procedures specifically do rely on residency as the determining factor, but instead rely on decision making. Kelseyville is a proper party to this action and its motion to dismiss is denied.

Konacti, however, has never served Student and has not been involved in any decisions regarding Student and is not the school district of residence for any future services. Therefore, Konacti's motion to dismiss is granted.

IT IS SO ORDERED

DATE: January 8, 2015

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings