BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

MILLER CREEK SCHOOL DISTRICT.

OAH CASE NUMBER 2022060347

ORDER DISMISSING ANOVA CENTER FOR EDUCATION AS A PARTY

JUNE 30, 2022

On June 13, 2022, Parent on behalf of Student filed a due process hearing request, known as a complaint, with the Office of Administrative Hearings, called OAH, against Miller Creek School District and Anova Center for Education, called Anova. On June 27, 2022, Anova filed a notice of insufficiency/motion for dismissal requesting it be dismissed as a party. Anova's June 27, 2022 motion is interpreted as a motion to dismiss. On June 28, 2022, Student filed opposition to Anova's motion to dismiss.

The purpose of the Individuals with Disabilities Education Act, called IDEA, (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children

and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education 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].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. 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, § 56502, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, a nonprofit public charter school that is not otherwise included as a local educational agency, or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The IDEA requires states to develop programs for ensuring that the mandates of the IDEA are met and that children eligible for special education receive a free appropriate public education. (20 U.S.C. § 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the local education agency, called LEA, 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).) 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].)

The IDEA defines an LEA, as "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools and secondary schools." (20 U.S.C. § 1401(19)(A); 34 C.F.R. § 303.23(a) (2011).)

Under California law, an LEA means a school district as defined in Education Code section 41302.5 or a charter school that is deemed an LEA under Education Code section 47641. (Ed. Code, § 47640.) Education Code section 41302.5 states school districts include "county boards of education, county superintendents of schools, and direct elementary and secondary level instructional services provided by the state…" (Ed. Code, § 41302.5.) Education Code section 47641 states a charter school is deemed an LEA if it provides written assurances in its petition that it will participate as an LEA. (Ed. Code, § 47641.)

Anova asserts that it is a certified non-public agency/non-public school and improperly named as a party in this matter because it is neither a governmental agency nor an LEA as defined under the law. Since it is not an LEA, Student's LEA, or a governmental agency, it requests OAH dismiss it from this case. Anova further argues that Student alleged and admitted that Anova was a private agency in the complaint

and referred to Anova as a private school that contracted with Student's LEA to provide services to Student. A review of Student's complaint confirms Anova's assertions.

Student concedes in the opposition that Anova is not an LEA but maintains that it is the "other party" that can be "called to account" at a due process hearing. Student is mistaken. OAH jurisdiction extends only to public agencies involved in any decisions regarding a pupil. A non-public school, non-public agency, or private school is not contemplated in the public agency definition as stated above. Further, as defined above, Anova is not an LEA or Student's LEA.

Further, Student believes the Anova placed itself within OAH jurisdiction when it agreed to the master contract and individual service agreement between the parties. However, contract disputes are also not within the purview of this tribunal, and a contract does not change the status of non-public or private school to a public agency.

Finally, Student argues under 20 U.S.C. section 1415(c)(2)(B)(i) and (ii), OAH has jurisdiction of the "other party." Student, however, misinterprets this statute and sections as they relate to prior written notice and a non-complaining party's response to the complaint. Thus, all of Student's arguments are unpersuasive.

Here, Anova is not an LEA or a public agency, as defined by law and as agreed to by the parties in the moving papers, motion to dismiss, and opposition. No facts can be alleged that would establish it as an LEA, or the responsible LEA for Student's free appropriate public education. Thus, Anova is not a proper party in this matter. Consequently, Student can no longer sustain a claim against Anova based upon the face of the complaint. Accordingly, Anova is dismissed from this matter, OAH case number 2022060347, for lack of jurisdiction.

ORDER

1. Anova's motion to dismiss it as a party is granted.
2. Anova is dismissed as a party in the above-entitled action, OAH case number 2022060347.
3. The matter will proceed as scheduled as to the remaining parties.

Cynthia Fritz

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Administrative Law Judge

Office of Administrative Hearings