BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. HUNTINGTON BEACH CITY SCHOOL DISTRICT; HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT, WEST ORANGE COUNTY CONSORTIUM FOR SPECIAL EDUCATION	OAH CASE NO. 2013100097 ORDER GRANTING MOTION TO DISMISS PORTIONS OF STUDENT'S DUE PROCESS REQUEST; ORDER DISMISSING WEST ORANGE COUNTY CONSORTIUM FOR SPECIAL EDUCATION

On September 30, 2013, Student's parent on behalf of Student (Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), naming the Huntington Beach City School District (Elementary School District), the Huntington Beach Union High School District (High School District), and the West Orange County Consortium for Special Education (SELPA).

On December 3, 2013, all three respondents filed a joint motion to dismiss portions of the complaint and to dismiss the SELPA as a party. On December 20, 2013, Student filed an opposition to the motion.[1]

DISCUSSION

The respondents raise several grounds for their motion to dismiss: 1) the SELPA is not a proper party to this action; 2) claims arising prior to September 30, 2011, are barred by the statute of limitations; 3) OAH does not have jurisdiction over Student's negligence

[1] In their moving papers, the respondents request that OAH take official notice of an earlier, nearly identical case filed by Student against these same respondents in August 2013 (OAH Case number 2013080328). That case was previously withdrawn by Student. There is no need to take official notice of that case in order to decide this motion. The respondents have not alleged res judicata or any other defense based on a prior due process claim. For purposes of this motion, Student's current complaint stands or falls on its own merit.

On December 23, 2013, the respondents filed an objection to the Student's opposition on the basis that it was filed late. Their objection is overruled.

claims, civil rights claims, or claims involving the custody proceeding between Student's parents; 4) OAH does not have authority to award monetary damages and some of the other remedies requested in Student's complaint; and 5) Student's complaint is imprecise because it names multiple respondents for each issue even though the two school districts involved do not have overlapping jurisdiction – the Elementary School District serves kindergarten through eighth grade and the High School District serves high school pupils.

The Motion to Dismiss the SELPA

Special education due process hearing procedures extend to the parent or guardian, to the pupil 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.)

In the motion to dismiss, the SELPA contends that it is not a proper party to this action because the Elementary School District and the High School District, not the SELPA, were responsible for providing a free appropriate public education (FAPE) to Student. Student's opposition contends that the SELPA and the two districts "consort together" and "are responsible" for Student's education. However, beyond blanket assertions of this type, Student alleges no facts to show that this SELPA was involved in any decisions regarding this Student or was responsible for providing special education or related services to Student.

Under California law, school districts operate under a "local plan." A district of sufficient size may create its own local plan. (Ed. Code, § 56195.1, subd. (a).) Otherwise, multiple districts join together to create the "local plan." (Ed. Code, § 56195.1, subd. (b).) The service area covered by the local plan is known as the special education local plan area. (Ed. Code, § 56195.1, subd. (d).)

The SELPA in the instant case is a special education local plan area. The Elementary School District and the High School District are two school districts operating within that plan.

Nothing in the Education Code renders a special education local plan area individually responsible to provide a FAPE to, or make education decisions about, a particular pupil. In this case, the two districts named in Student's complaint, the Elementary School District and the High School District, were the responsible agencies. Student does not allege that the SELPA made any particular educational decisions about Student, and the SELPA had no statutory obligation to do so. Accordingly, the SELPA is not a proper party in this case and must be dismissed.

The Two-Year Statute of Limitations

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. § 1415(f)(3)(C).) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

Student filed this action on September 30, 2013, so the two-year statute of limitations period began on September 30, 2011. While portions of Student's complaint allege events which occurred within those two years, other portions of the complaint allege events that occurred prior to that time period. Student's complaint is somewhat long and rambling, so it is not clear how many of those events are intended to be actual charges and how many are just for background. However, to the extent that Student intends to allege a denial of FAPE based on any events which occurred prior to September 30, 2011, those allegations are barred by the statute of limitations and must be dismissed.

In the opposition papers, Student argues that an exception to the statute of limitations applies. However, Student merely makes a general statement of the statutory language regarding exceptions; Student does not allege any facts to show that an exception might apply. The facts that Student alleges would not give rise to an exception. For example, Student argues that the District "mislead the mother by also stating the District would not consider an RTC in California because no RTC in California would be appropriate…." Even if that claim is correct, it is not a misrepresentation by either of the school districts that the district had resolved the problem forming the basis for the complaint.

Allegations Outside of OAH Jurisdiction

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to ensure that all children with disabilities have available to them a FAPE, 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 FAPE 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 Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code, or similar civil rights or discrimination laws. OAH also has no jurisdiction to hear tort claims (such as negligence claims for damages) or claims involving child custody disputes.

Student's complaint contains several allegations which are outside of OAH jurisdiction. For example, Student alleges negligence and failure to exercise ordinary care by District employees. Student alleges the respondents are responsible for that negligence under the doctrine of respondeat superior. Student also alleges violations of Title VII of the Civil Rights Act. These claims are not within the jurisdiction of OAH to decide and must be dismissed.

Although it is not entirely clear in Student's opposition papers, Student appears to argue that the civil rights and torts claims amount to a denial of FAPE. However, Student alleges no legal authority to support this argument.

Likewise, Student improperly raises issues regarding the actions of district employees in a child custody dispute between Student's parents. In an allegation which Student labels as "5.1.12," Student alleges that the respondents failed to offer a FAPE by "interfering in child custody matters in order to have the special education student removed from their district where the mother resided, and placed in the custody of the father whom (sic) resided in another school district in so that they would not have to fund the appropriate services…." Child custody disputes and a school district's actions in connection with those disputes are not within the jurisdiction of OAH to decide. Student cannot give OAH jurisdiction simply by adding the words "failed to offer a FAPE." That issue must be dismissed.

Student's Proposed Remedies

Student's complaint contains almost five pages of proposed remedies. The respondents object to several of these on the basis that they are beyond the jurisdiction of OAH to award. Student contends that they are all appropriate remedies for a denial of FAPE.

The remedy in a special education due process case is within the discretion of the administrative law judge hearing the case. (See *School Committee of the Town of Burlington v. Department of Education* (1985) 471 U.S. 359, 369.) While some of Student's many proposed remedies are clearly beyond the jurisdiction of OAH to award (such as Student's request for monetary damages for emotional injury to Student's parent), there is no need for an order dismissing those improper remedies at this time. They can be addressed by the administrative law judge hearing the case, either during the prehearing conference or at hearing.

The Confusion Between the Two School Districts

The respondents contend that Student's complaint is confusing because it contains allegations against the school districts jointly. The respondents contend that the Elementary School District and the High School District do not have overlapping jurisdiction, so the joint allegations are imprecise and confusing.

Student argues that the two districts had overlapping responsibilities because of the issues involving Student's transition from middle school to high school.

Any confusion in the allegations is not jurisdictional and is not the proper subject of a motion to dismiss. The issues relating to each of the respondents can be clarified during the telephonic prehearing conference or at hearing. Essentially, the respondents are seeking a motion for summary adjudication of those issues, but such a motion is not proper in a special education due process proceeding.

ORDER

1. The motion to dismiss the West Orange County Consortium for Special Education is granted. The West Orange County Consortium for Special Education is hereby dismissed from the case.

2. All claims arising before September 30, 2011, are barred by the statute of limitations and are hereby dismissed.

3. The motion to dismiss Student's negligence and civil rights claims is granted. Student's Issue 5.1.12 of the complaint and any other tort claims based on negligence or claims based on violations of civil rights laws are hereby dismissed.

4. In all other respects, the motion to dismiss is denied. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: December 24, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings