BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017050511
v.	ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS
KERN COUNTY OFFICE OF EDUCATION.	

On May 18, 2017, Kern County Office of Education filed a motion to dismiss Student's complaint with the Office of Administrative Hearings. The grounds for filing that motion were that Student's complaint contained no allegations or facts that Kern County Office of Education was a proper party to the action. Alternatively, Kern County asked that the complaint be dismissed because OAH does not have jurisdiction over Student's first three claims, and as to Student's fourth claim, again arguing that it is not a proper party. On May 22, 2017, Student filed an opposition to Kern County's motion to dismiss. The opposition also contained a request for sanctions against Kern County.[1]

APPLICABLE LAW

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.); the Americans with Disabilities Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.); and the Unruh Civil Rights Act (Civ. Code, § 51).

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.)

There is no summary judgment procedure in special education law.

[1] On May 18, 2017, Kern County also filed a notice of insufficiency as to Student's complaint. A separate order is being issued as to the sufficiency of the complaint.

DISCUSSION

Kern County's Motion to Dismiss

Student raises four "Claims" in her complaint, which will be referred to in this Order as issues. The first three issues presented in Student's complaint are: 1) violations of the ADA; 2) violations of Section 504; and 3) violations of the Unruh Act. It her opposition, Student does not dispute Kern County's argument that OAH lacks jurisdiction over the first three issues. These issues are dismissed.

Student's fourth issue (Issue 4) claims violations of the Individuals with Disabilities Education Act (29 U.S.C. §§ 1400, et seq.). OAH does have jurisdiction over this issue. Kern County's motion to dismiss is not supported by a sworn declaration, nor are any exhibits attached. Rather it contains rhetoric to the effect that Student's complaint does not contain an allegation that Kern County is the local education agency responsible for providing Student with an education.

Student's opposition has an Exhibit A attached which consists of several notices of individualized education program team meetings that were sent to Parents. The notices are on Kern County forms. In the place where the Student's school is named, the form has been completed with the entry, "Sequoia El. (COE)," except for the last notice in which the entry is completed as "McKinley Elementary (COE)." Exhibit A also contains several documents that appear to be the first page, or cover page of several IEP's pertaining to Student. On each of these documents, in the place where the District of Service is named, Kern County Office of Education is named. This exhibit strongly refutes Kern County's argument that the complaint should be dismissed because it is not a local education agency serving Student. Further, in essence, Kern County's motion to dismiss Issue 4 asks OAH to dismiss the issue without ever holding a hearing; and is akin to a motion for summary judgment. Therefore, Kern County's motion to dismiss Issue 4 is denied.

Student's Request for Sanctions

Student asks that OAH award her attorney $1,200, representing four hours of work he spent responding to Kern County's motion to dismiss.[2] OAH does have the power to shift costs from one party to another, when it finds a party has acted in bad faith. (Govt. Code § 11455.30.) However, given all of the circumstances in this case, and the fact that three of the four issues are dismissed, the motion is denied.

ORDER

1. Kern County's motion to dismiss is granted in part and denied in part.

[2] Student also argues that Kern County should have filed a demurrer claiming that it could not provide the relief Student has requested. However, special education law contains no provisions for the filing of a demurrer.

2. Kern County's request to dismiss Student's Issues 1, 2, and 3, is granted.

3. Kern County's request to dismiss Student's Issue 4 is denied. The matter will proceed as scheduled as it pertains to this issue.

IT IS SO ORDERED.

DATE: May 24, 2017

DocuSigned by:

Rebecca Freie

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings