BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN DIEGUITO UNION HIGH SCHOOL DISTRICT, SAN DIEGO COUNTY OFFICE OF EDUCATION AND CALIFORNIA DEPARTMENT OF EDUCATION.

OAH CASE NUMBER 2021050037

ORDER DISMISSING CALIFORNIA DEPARTMENT OF EDUCATION

JULY 23, 2021

On June 18, 2021, Parents on behalf of Student filed a Second Amended Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, naming San Dieguito Union High School District, North Coastal Consortium for Special Education, San Diego County Office of Education, and California Department of Education. OAH dismissed North Coastal Consortium for Special Education on July 2, 2021.

On June 28, 2021, California Department of Education filed a motion to be dismissed as a party in this matter. Student opposed the motion on July 1, 2021. On July 6, 2021, California Department of Education replied to the opposition.

APPLICABLE LAW AND DISCUSSION

There is no summary judgment procedure in special education cases. OAH will, however, dismiss allegations and cases not within its jurisdiction. OAH has jurisdiction only over claims alleging the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), called IDEA, or California special education laws were violated.

Special education due process hearing procedures may involve a student's parent or guardian, the student under certain conditions, and "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, 56028.5.) Similarly, the Code of Federal Regulations provides that the term "public agency" encompasses state educational agencies such as the California Department of Education, and local educational agencies such as the San Dieguito Union High School District, "and any other political subdivisions of the State that are responsible for providing education to children with disabilities." (34 C.F.R. § 300.33 (2012).)

The IDEA leaves it to each state to establish mechanisms for determining which of the state's public agencies is responsible for providing special education services to a particular student, and procedures for resolving interagency disputes concerning financial responsibility. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) Under California law, the public agency

responsible for providing education to a child between the ages of six and 18 is generally the school district in which the child's parent or legal guardian resides (Ed. Code, § 48200), although certain responsibilities, such as the provision of special education services in juvenile court schools, may be regionalized by local plans and administered by county offices of education. (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 et seq.). OAH may determine the residency of a parent or guardian in a due process proceeding and establish the public agency responsible for the student's special education. (*Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; J.*S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

Under the IDEA, a state educational agency such as California Department of Education is responsible for "general supervision" of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1400(d)(11)(A).) California Department of Education is generally not a party to due process proceedings because a local educational agency, such as a school district or county office of education, is the public agency that is responsible for providing special education services, and "involved in any decisions regarding [the] pupil." (Ed. Code § 56501, subd. (a).) There are limited exceptions to this general rule.

For example, California Department of Education is the responsible public agency in due process hearings involving students attending the state schools for the deaf and for the blind that are operated by California Department of Education. (Ed. Code, §§ 59002; 59102). Here, Student makes no claim of a state school's involvement. Thus, this exception is inapplicable.

California Department of Education may also be responsible for providing special education, by default, if conduct of the legislature or California Department of Education has made it impossible to identify a responsible local educational agency. (*Orange*

County Department of Education v. California Department of Education (9th Cir. 2011) 668 F.3d 1052, 1063; *Los Angeles Unified School Dist. v. Garcia* (9th Cir. 2012) 669 F.3d 956, 960 (citing *Orange County*) (*Garcia*).) Further, California Department of Education may be responsible for providing special education services where the relevant local educational agency is unable or unwilling to provide those services. (*Garcia*, *supra*, 669 F.3d at p. 960, citing 20 U.S.C. § 1413(g).) Here, Student is a minor and his parents are residents of the San Dieguito Union High School District. Student's complaint asserts that San Dieguito Union High School District agreed to assess Student for special education eligibility and held an individualized education program team meeting to review the assessment and to offer special education and related services on April 2, 2021. Therefore, Student failed to show that it is impossible to identify a local educational agency, or that a local educational agency is unable or unwilling to provide special education services. Accordingly, the above-referenced exceptions are also inapplicable.

Student failed to show that California Department of Education should be a party to this matter. Rather, facts pleaded by Student show that a local educational agency is the public agency responsible for providing special education services for Student. (Ed. Code, § 56501, subd. (a).)

ORDER

Student's due process hearing request against California Department of Education is dismissed. This matter shall proceed against the remaining respondents as presently scheduled unless otherwise ordered.

IT IS SO ORDERED.

Paul H. Kamoroff
Paul H. Kamoroff (Jul 23, 2021 17:01 PDT)

Paul H Kamoroff

Administrative Law Judge

Office of Administrative Hearings