

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARCOS UNIFIED SCHOOL
DISTRICT AND BANYAN TREE
FOUNDATION ACADEMY

OAH CASE NO. 2013010566

ORDER GRANTING MOTION TO
DISMISS

On January 18, 2013, Student filed a Request for Due Process Hearing (complaint), naming San Marcos Unified School District and Banyan Tree Foundation Academy as the respondents.

On February 12, 2013, Banyan Tree Foundation Academy filed a Motion to Dismiss, alleging that it should be dismissed from this case.

On February 15, 2013, Student filed an opposition to the motion.

APPLICABLE LAW

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 free appropriate public education” (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.)

The Office of Administrative Hearings (OAH) is vested with jurisdiction over *public agencies*, pursuant to Education Code section 56500 et seq., under the IDEA as follows:

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

In the present matter, Banyan Tree Foundation Academy states in its motion for dismissal that it is an “NPS” [California certified non-public school]. Student, in her reply to the earlier filed and decided stay put motion in this case, concedes on lines 18 and 19 that Banyan Tree Foundation Academy is an NPS.

OAH does not generally dismiss claims that have otherwise been properly pled. However, OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, including dismissing improper parties. (*Student v. LACOE, et al.* (2010), Cal. Offc. Admin. Hrngs, Case No. 2009100740 [order granting motion to dismiss school district].)

OAH has granted motions to dismiss when the complaint has named an NPS as a party to a due process complaint. (*Student v. Heartspring* (2010), Cal. Offc. Admin. Hrngs, Case No. 2010100936 [order granting motion to dismiss Heartspring], *Student v. Manteca Unified School Dist. Et.al* (2011), Cal. Offc. Admin. Hrngs, Case No. 2011060184 [order granting motion to dismiss Children’s Home of Stockton].)

The parties agree that Banyan Tree Foundation Academy is an NPS and that it provided educational services to Student. Student has not presented any evidence that Banyan Tree Foundation Academy is a public agency or local educational agency responsible under California law for providing her with a FAPE.

Therefore, Banyan Tree Foundation Academy is not a proper party to a due process hearing under Education Code sections 56500 and 56028.5 and the motion to dismiss is granted.

ORDER

Banyan Tree Foundation Academy's Motion to Dismiss is granted. Banyan Tree Foundation Academy is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

Dated: February 20, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings