

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014060546

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On June 6, 2014, Student filed a request for a due process hearing (complaint), naming multiple parties, including the California Department of Education (CDE), as the respondents. On June 10, 2014, Student filed a corrected complaint, continuing to name multiple respondents, including CDE.

On June 13, 2014, CDE filed a motion to dismiss Student's case against CDE on the ground that it is not an agency providing special education services to Student and is not a proper party to this action. On June 17, 2014, Student filed an opposition to the motion.

APPLICABLE LAW

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (20 U.S.C. § 1400, et seq. (IDEA).) (*Wyner v. Manhattan Beach Unified Sch. 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, § 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.)

The IDEA requires states to develop programs for ensuring that the mandates of IDEA are met and that children eligible for special education receive a free appropriate public education (FAPE). (20 USC section 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the local education agency (LEA), usually the school district in which the parents of the child reside. (See, e.g., Ed. Code §§ 56300, 56340 [describing LEA responsibilities].) The law also contemplates

that, when a parent disputes the educational services provided to the special needs child, the proper respondent to the due process hearing request is the LEA. (See, e.g., Ed. Code, 56502, subd. (d) (2) (B) [LEA's response to due process complaint].) Only in unusual circumstances does California law deviate from that statutory scheme to require a different entity to provide those services.

Under the IDEA, a state educational agency such as CDE is responsible for “general supervision” of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1412(a)(11)(A).) CDE generally is not a party in a due process proceeding because an LEA – a school district or county office of education – not the CDE, is in most instances the public agency that is responsible for providing special education services, and “involved in any decisions regarding [the] pupil.” (Ed. Code, § 56501, subd. (a).)

An exception to this general rule that CDE is not an LEA responsible for providing educational services involves the children in the state schools for the deaf or blind. (Ed. Code, §§ 59002; 59102.) Another exception makes CDE responsible for providing special education, by default, if under the applicable circumstances it is otherwise impossible to identify a responsible LEA. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063 [holding CDE responsible for providing special education services to a parentless child where the Orange County Juvenile Court had not appointed a legal guardian or responsible adult, and then-existing California law under the facts presented did not allow identification of a “parent” for purposes of determining residency and a responsible LEA] (*Orange County DOE*).)

DISCUSSION

Student’s complaint alleges that Student is a 21-year-old man eligible for special education under the category of traumatic brain injury, who at all relevant times resided within the boundaries of respondent Saddleback Valley Unified School District (Saddleback Valley USD) or respondent Orange Unified School District (Orange USD). California law places responsibility for providing Student with a FAPE on these school districts of residence, as statutorily designated LEAs.

Student does not allege that CDE provided any educational services to Student or was involved with Student’s education as an LEA. Instead, Student alleges that CDE is the public agency that is ultimately responsible to oversee public schools in the State of California, and is ultimately responsible to ensure that every student receives an appropriate educational program.

The general oversight authority of CDE is not sufficient to sustain a due process complaint. In unusual circumstances, such as a situation in which California law fails to designate an LEA with responsibility to address a child’s education, or in which a student is blind, CDE may sometimes be a proper party. However, Student has not alleged any facts or law to show such a circumstance in this case.

Student's allegations against CDE are beyond the limited jurisdiction of OAH in a due process case. A due process proceeding concerns an individual offer of placement and services, and determines whether the student is provided with a FAPE. OAH has no jurisdiction to direct CDE in the conduct of its statewide supervisory duties.

ORDER

1. CDE's motion to be dismissed from this case is granted.
2. CDE is hereby dismissed as a party.
3. The matter will proceed as scheduled against the remaining parties. All hearing and other dates will remain on calendar as previously scheduled.

IT IS SO ORDERED.

DATE: June 18, 2014

/s/
ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings