

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT;
CALIFORNIA CHILDREN'S SERVICES.

OAH Case No. 2014060843

ORDER DENYING MOTION TO
DISMISS, OR IN THE ALTERNATIVE,
MOTION TO LIMIT ISSUES

On June 13, 2014, Student filed a request for a due process hearing (complaint), naming Fresno Unified School District and California Children's Services as the respondents.

On August 14, 2014, California Children's Services filed a motion to dismiss, or in the alternative, motion to limit issues, contending that it is not properly a party to this action before the Office of Administrative Hearings.

On August 18, 2014, Student filed an opposition to that motion.

APPLICABLE LAW

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, California Children's Services has been providing medically necessary physical therapy and occupational therapy to Student in connection with Student's educational program. Student contends that California Children's Services failed to provide adequate services and failed to comply with certain requirements of special education law.

California Children's Services contends that the school district, not California Children's Services, was the local educational agency responsible for providing a free appropriate public education to Student. California Children's Services contends that it had no responsibility to provide a FAPE to Student, and further contends that OAH has no

jurisdiction over California Children's Services in a special education due process hearing. It contends that it is governed by a different set of laws than the special education laws, and that there is a different procedure to review its decision to limit or end services to a child.

OAH has addressed these same arguments in the past and has determined that OAH has jurisdiction to hear complaints brought against California Children's Services under special education due process laws. (See *Parent on Behalf of Student v. California Children's Services* (2012) OAH case no. 2011060589; *Parents on Behalf of Student v. Tuolumne County California Children's Services* (2013) OAH case no. 2012100238; see also Gov. Code § 7572, subd. (c)(3).) In its current motion to dismiss, California Children's Services appears to rely on the same legal authorities as it did in those two cases, with no attempt to distinguish those cases, nor does it cite to any recent authority that contradicts those cases.

There is no legal basis to dismiss California Children's Services from this case at this time. The motion to dismiss must be denied.

Likewise, the motion to limit issues must be denied. Special education due process proceedings permit only very limited motion practice. There is no provision in special education due process law for motions for a partial summary judgment or summary adjudication of issues. California Children's Services' motion to limit issues is essentially a motion for summary adjudication by a different name. Whether any issues should be limited is a matter for the administrative law judge assigned to hear the case to discuss with the parties during the prehearing conference or at the hearing.

ORDER

California Children's Services' motion to dismiss or in the alternative to limit issues is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: August 21, 2014

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings