

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION, TOM TORLAKSON, AND
HAWTHORNE SCHOOL DISTRICT.

OAH Case No. 2014090949

ORDER GRANTING MOTION TO
DISMISS AND DISMISSING
CALIFORNIA DEPARTMENT OF
EDUCATION AND TOM
TORLAKSON

On September 20, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint), naming the California Department of Education, the Superintendent of Public Instruction, Tom Torlakson,¹ and the Hawthorne School District as respondents.

On October 3, 2014, the CDE and Superintendent Torlakson filed a Motion to Dismiss, alleging that (1) OAH lacks jurisdiction to hear the allegations in the complaint, (2) the complaint fails to state a claim for which relief can be granted, and (3) that Superintendent Torlakson is not an appropriate party.

OAH received no response to the Motion to Dismiss from Student or Hawthorne.

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 (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

¹ Superintendent Torlakson was identified as “investigator” in the complaint.

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

Student’s complaint contains five issues. All issues relate to compliance complaints submitted by Student to the CDE, CDE complaints S-1059-12/13. The complaint fails to make any allegations regarding the IDEA. Thus, OAH lacks jurisdiction to hear the issues raised in Student’s complaint against CDE’s and Superintendent Torlakson.

ORDER

CDE’s and Superintendent Torlakson’s Motion to Dismiss is granted.

IT IS SO ORDERED.

DATE: October 7, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings