

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NOVATO UNIFIED SCHOOL DISTRICT,
LARKSPUR-CORTE MADERA SCHOOL
DISTRICT AND REED UNION SCHOOL
DISTRICT.

OAH Case No. 2014090047

ORDER DENYING MOTION TO
DISMISS

On September 22, 2014, Student filed a first amended complaint in this matter, naming the Novato Unified School District (Novato), the Larkspur-Corte Madera School District (Larkspur), and the Reed Union School District (Reed). On November 7, 2014, Larkspur filed a motion to be dismissed as a party on the ground that OAH lacks jurisdiction over it. On November 13, 2014, Student filed an opposition to the motion. The other parties have not responded to the motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” 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.) 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 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.)

DISCUSSION AND ORDER

It appears from the moving and opposing papers that at all relevant times Parents (and therefore Student) resided within the boundaries of Novato, but Student has been parentally placed in a private school within the boundaries of Reed. At one point Parents, possibly believing that the private school (which has a Corte Madera address) was within the Larkspur district, asked Larkspur to assess Student and declare him eligible for special education and related services.

Larkspur, under the same mistaken assumption, assessed Student, held an individualized education program team meeting for him, and declared him ineligible for special education. Later, Larkspur learned that the private school was in fact within Reed's boundaries. Larkspur now argues that since Student never resided or attended a private school within its boundaries, it cannot have any liability to Student, and, in the alternative, if it had any child find obligations it discharged them. It concludes that OAH lacks jurisdiction to hear Student's claims against it.

Student responds that OAH has jurisdiction over matters relating to eligibility and assessment, and Larkspur has been involved in decisions concerning Student, so OAH has jurisdiction over Larkspur. It appears that Student claims Larkspur, by assessing Student, holding an IEP team meeting, and determining his eligibility, somehow acquired legal responsibilities concerning Student it might not otherwise have had.

This novel theory is factual as well as legal and cannot be resolved on motion. The substantial factual materials attached to Larkspur's moving papers show that it essentially seeks summary judgment on its liability, which OAH does not have the authority to grant. The intertwined legal and factual issues raised by Student will have to be resolved at hearing.

Larkspur's motion to dismiss is denied.

DATE: November 14, 2014

/s/

CHARLES MARSON

Administrative Law Judge

Office of Administrative Hearings