

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

WEST ORANGE COUNTY
CONSORTIUM FOR SPECIAL
EDUCATION, PLACENTIA-YORBA
LINDA UNIFIED SCHOOL DISTRICT,
ORANGE UNIFIED SCHOOL DISTRICT,
and ORANGE COUNTY DEPARTMENT
OF EDUCATION.

OAH Case No. 2015071008

ORDER GRANTING WEST ORANGE
COUNTY CONSORTIUM FOR
SPECIAL EDUCATION'S MOTION TO
BE DISMISSED AS A PARTY

On July 13, 2015, Student's Educational Rights Holder on behalf of Student filed a request for due process hearing (complaint), naming the West Orange County Consortium for Special Education, the Placentia-Yorba Linda Unified School District, the Orange Unified School District, and the Orange County Department of Education as respondents.

On July 20, 2015, West Orange County filed a motion to be dismissed as a party to this case, contending that it has not been involved in any educational decisions for Student, has not provided any educational services directly to Student, and is not a proper party to this action. Student has not filed an opposition or other response to the motion.¹

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).) The Office of Administrative Hearings has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

¹ The Orange County Office of Education filed a non-opposition to West Orange County's motion to dismiss on July 21, 2015. None of the other named respondents have filed a response.

Special education due process hearing procedures extend to the parent or guardian, to the pupil 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 this case, Student contends that West Orange County substantively denied him a free appropriate public education over the last two years by failing to offer and provide him with an appropriate educational placement at a residential treatment center, or provide him with the services and supports he required. However, Student does not allege that West Orange County was at any time a local educational agency that either was required to provide him with educational services, or that it actually did provide him with educational services at any time pertinent to Student’s complaint. The only facts raised by Student in his complaint regarding West Orange County is that it provided an educationally related mental health services assessment to Student in 2015 in which the assessor made certain findings and recommendations regarding Student’s educationally related mental health needs. However, Student has not alleged that the assessment was ordered by West Orange County. Nor has Student challenged the assessment process or the assessment findings.

Student’s complaint does not contain any nexus between West Orange County and any duty to provide him with a FAPE. Nor is his contention that West Orange County assessed him in 2015 supported by any facts indicating direct involvement of that agency in the assessment process. In contrast, Student’s complaint raises specific allegations against the other named respondents regarding his contentions that they failed to provide him with a FAPE.

West Orange County submitted the declaration of Nancy Finch-Heuerman, its Director, in support of its motion to dismiss. Ms. Finch-Heuerman’s declaration establishes that West Orange County did not have any direct involvement with Student’s education and did not provide any special education or related services directly to Student. The declaration also establishes that the only connection West Orange County has had to Student is that it provided the form for the 2015 educationally related mental health services assessment of Student, but that the assessment was not conducted by a West Orange County employee. Student has not filed any responsive pleading to the motion to dismiss and therefore has not disputed the assertions made by West Orange County in its motion

West Orange County’s oversight of the school districts within its area does not make it a local educational agency or constitute the provision of educational services to an individual child. (See Order Granting Motion to Dismiss Party dated December 17, 2009, *Parent on Behalf of Student v. Saddleback Valley Unified School District*, OAH case number

2009110619; Order Granting Special Education Local Planning Area's Motion to Dismiss dated July 28, 2009, *Parent on Behalf of Student v. Panama-Buena Vista Union School District*, OAH Case number 2009050651.)

There are not facts in Student's complaint demonstrating that West Orange County provided any services to Student or that it was legally obligated to do so. Student's complaint on its face does not show that West Orange County is a necessary or proper party to this case. West Orange County's motion to be dismissed is therefore granted.

ORDER

1. West Orange County's Motion to Dismiss is granted.
2. West Orange County is hereby dismissed as a party in the above-entitled matter.
3. The matter will proceed as scheduled with the remaining parties. West Orange County shall be removed as a named party in future pleadings or orders.

DATE: July 30, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings