

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, ABC UNIFIED SCHOOL
DISTRICT, AND CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH Case No. 2015020992

ORDER DENYING MOTION TO
DISMISS CALIFORNIA
DEPARTMENT OF EDUCATION AS A
PARTY

On February 11, 2015, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Los Angeles Unified School District, ABC Unified School District, and California Department of Education. CDE moved to be dismissed from the case and was dismissed as a party on March 3, 2015, for Student's failure to allege facts that would support a finding against CDE.

On August 7, 2015, Student filed an Amended Due Process Hearing (amended complaint), which the Office of Administrative Hearings deemed to be a Motion to Amend the Due Process Hearing Request. The amended complaint added information related to an IEP team meeting that occurred after the original complaint was filed, added specific reference to the 2014-2015 school year in what Student identified as the first issue, and added an issue regarding whether the obligation to provide Student with a FAPE shifted to CDE due to ABC's and Los Angeles' disclaimers of responsibility for offering Student a FAPE. CDE filed a Motion to Be Dismissed as a Party to the amended complaint on August 12, 2015, and the substance of the motion only referred to its February 11, 2015 motion to be dismissed as a party and February 17, 2015 reply brief. Student filed an opposition to CDE's motion to dismiss on August 17, 2015. Los Angeles and ABC did not file opposition.

OAH granted Student's Motion to Amend and the amended complaint was deemed filed on August 18, 2015. Within an hour after the order was served, CDE filed a reply brief to its motion to be dismissed as a party, consisting entirely of arguments opposing the filing of an amended complaint and concluding with the request that OAH deny Student's request to file an amended complaint against CDE. CDE offered no explanation of why it submitted opposition to the amended complaint 11 days after it was filed. Moreover, the arguments of the reply brief are meritless and do not impact OAH's decision to allow the filing of the amended complaint.

Generally, CDE seeks dismissal because it typically only has supervisory responsibility for special education programming and is not directly responsible for providing educational programming or services. CDE states because it was previously dismissed as a party in this case, the prior order should have preclusive effect and it should again be dismissed from Student's amended complaint. CDE's motion contends the amended complaint is merely "the same case against the CDE" and CDE does not respond to or address the substantive and legal claims Student added to the amended complaint regarding CDE becoming obligated to provide Student with a FAPE due to ABC's and Los Angeles' disclaimers of responsibility for offering Student a FAPE. In its reply brief, CDE asserts the amended complaint "fails to explain why the law is incapable of assigning responsibility to the appropriate district."

In opposition, Student states that he did not again file the same case against CDE; the amended complaint added allegations to address OAH's previous order dismissing CDE, specifically alleging that Los Angeles and ABC have refused to offer Student placement in a residential treatment center and both disclaim responsibility for offering Student a FAPE once he leaves the hospital in which he currently resides. Student argues that CDE would be the agency responsible for providing Student with a FAPE if neither school district is the responsible local educational agency or if whichever district is the local educational agency is unable or unwilling to provide Student special education and related services. Student contends the deficiencies of the original complaint were addressed and sufficient facts and legal arguments have been included in the amended complaint to make CDE a proper party to the case.

APPLICABLE LAW

The Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) and California state law counterparts do not set forth a procedure for dismissing claims on the merits without first affording the petitioning party a chance to develop a record at hearing. The Administrative Procedures Act (Gov. Code, § 11340 et seq.) requires that parties appearing before OAH receive notice and an opportunity to be heard, including the opportunity to present and rebut evidence. (Gov. Code, § 11425.10, subd. (a)(1).) However, at a prehearing conference, an administrative law judge may address such matters "as shall promote the orderly and prompt conduct of the hearing" (Gov. Code, § 11511.5, subd. (b)(12)), and at hearing, an ALJ may take action "to promote due process or the orderly conduct of the Hearing." (Cal. Code Regs., tit. 1, § 1030, subd. (e)(3).) Also, as an administrative tribunal, OAH has jurisdiction to determine the extent of its own jurisdiction and power to act. (See *People v. Williams* (2005) 35 Cal. 4th 817, 824.)

Accordingly, OAH may dismiss a matter in its entirety, or one or more claims, where it is evident from the face of the complaint that the alleged issues fall outside of OAH jurisdiction or the pleaded facts cannot sustain a claim. Such circumstances may include, among other things, complaints that assert civil rights claims or claims seeking enforcement

of a settlement agreement, or that assert claims against an entity that cannot be legally responsible for providing special education or related services under the facts alleged.

Special education due process hearing procedures extend to a student's parent or guardian, to the student under certain conditions, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) The "public agency" may be "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.) Similarly, the Code of Federal Regulations provides that the term "public agency" encompasses state educational agencies such as CDE, as well as local educational agencies such as Los Angeles and ABC, "and any other political subdivisions of the State that are responsible for providing education to children with disabilities." (34 C.F.R. § 300.33 (2012).)

The IDEA leaves it to each state to establish mechanisms for determining which of the state's public agencies is responsible for providing special education services to a particular student, and procedures for resolving interagency disputes concerning financial responsibility. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) Under California law, the public agency responsible for providing education to a child between the ages of six and 18 is generally the school district in which the child's parent or legal guardian resides (Ed. Code § 48200), although certain responsibilities, such as the provision of special education services in juvenile court schools, may be regionalized by local plans and administered by county offices of education (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 et seq.). OAH may determine the residency of a parent or guardian in a due process proceeding and establish the public agency responsible for the student's special education. (See *Union School Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525; *J.S. v. Shoreline School Dist.* (W.D. Wash. 2002) 220 F.Supp.2d 1175, 1191.)

For reasons discussed below, CDE's motion to be dismissed from this matter is denied because the amended complaint alleges facts and law that could result in CDE being found legally responsible for providing Student special education and related services.

DISCUSSION

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. § 1400(d)(11)(A).) CDE is generally not a party to due process proceedings because a local educational agency, such as a school district or county office of education, is the public agency that is responsible for providing special education services, and "involved in any decisions regarding [the] pupil." (Ed. Code § 56501, subd. (a).) There are exceptions to this general rule.

For example, CDE is the responsible public agency in due process hearings involving students attending the state schools for the deaf and for the blind that are operated by CDE (Ed. Code, §§ 59002; 59102). Here, Student makes no claim of a state school's involvement; thus, this exception is inapplicable.

CDE may also be responsible for providing special education, by default, if conduct of the legislature or CDE has made it impossible to identify a responsible local educational agency. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063; *Los Angeles Unified School Dist. v. Garcia* (9th Cir. 2012) 669 F.3d 956, 960 (citing *Orange County*).) Further, CDE may be responsible for providing special education services where the relevant local educational agency is unable or unwilling to provide those services. (*Garcia*, at p. 960, citing 20 U.S.C. § 1413(g).) Here, these exceptions are exactly what Student alleges make CDE potentially responsible for providing Student a FAPE.

In the amended complaint, Student alleges that he is effectively trapped living in a hospital because although his treating physician states he no longer needs to be hospitalized, neither the district in which the hospital is located nor the district in which his parent resides are willing to offer placement in a residential treatment center, as recommended at the last two IEP team meetings, so he has no where to go and therefore remains unnecessarily hospitalized. Student alleges that under either or both of two scenarios under which CDE may be responsible for providing a student a FAPE, CDE may be responsible for providing him a FAPE and is therefore an appropriate party because Los Angeles and ABC each claim not to be Student's local educational agency and refuse to offer Student a residential treatment center placement upon his discharge from the hospital.

Student alleges that Los Angeles had been the local educational agency responsible for providing him a FAPE since 2011, when he was placed with his foster Parent, who lived – and continues to live – within Los Angeles. Los Angeles held a number of individualized educational program team meetings, changing his eligibility from emotional disturbance to intellectual disability in May 2012. Los Angeles placed Student in a number of nonpublic schools.

In March 2013, Student was admitted to College Hospital, which is located within ABC. Initially, Student was admitted pursuant to Welfare and Institutions Code section 5585.50. However, Student continued to be hospitalized and ABC held a 30-day IEP in April 2013, which provided services and placement at College Hospital. ABC held an annual IEP in April 2014, which continued to provide services and placement at College Hospital, where he remained for the 2013-2014 school year.

Student alleges that in fall 2014, ABC conducted a battery of evaluations, including a Functional Behavior Assessment and Educationally Related Intensive Social Emotional Behavioral Service assessment. On January 9, 2015, ABC convened an IEP team meeting to review the assessments. Student states that one of the recommendations of the behavior assessment was that Student be placed in a residential treatment facility, where he would

receive individual counselling and case management. Student then alleges that “[d]espite these recommendations, [ABC] made no changes to the Student’s IEP.” Student alleges that in spring 2015, ABC held another IEP team meeting and that although one of the recommendations was that Student be placed in a residential treatment facility, ABC failed to offer such a placement. Student alleges that Los Angeles was invited to the IEP team meetings held in the 2014-2015 school year, but Los Angeles refused to attend. Student alleges that he is ready to be discharged from the hospital but cannot be released because no local educational agency is willing to assume responsibility for offering him placement in a residential treatment center, as recommended by the IEP team and his treating physician.

Student specifically alleges that ABC states it is only responsible for offering Student a FAPE while he is hospitalized; Los Angeles states it is only responsible for offering Student a FAPE after he is discharged; “[b]oth ABC and [Los Angeles] argue that, under California statutory law, they are not responsible for offering Student a FAPE;” and, “[a]ccordingly, the Legislature or the Department of Education has made it impossible to identify a responsible local educational agency and CDE should be obligated to offer Student a FAPE.”

Additionally or alternatively, Student specifically alleges that “[Los Angeles] and ABC have also been unable or unwilling to offer Student a FAPE,” again due to each district’s assertions that they have no legal obligation to Student to offer him a way out of the hospital and into a residential treatment center, and that “[s]ince the relevant local educational agencies are unable or unwilling to provide Student with a placement or services, CDE must hold an IEP at College Hospital and offer Student [a residential treatment center] placement.”

The amended complaint lists five issues. The first is that Los Angeles and ABC failed to provide a FAPE for the 2012-2013, 2013-2014, and 2014-2015 school years because Student was not provided a proper placement and services. The second issue asserts that Los Angeles and ABC failed to develop appropriate goals and objectives to meet Student’s unique needs. The third issue states that Los Angeles did not provide a FAPE by failing to assess Student in all areas of suspected disability by conducting a neuropsychological assessment, a functional behavioral assessment, or a functional analysis assessment. The fourth issue claims that CDE is responsible for providing Student a FAPE, by default, either because conduct of the legislature or CDE has made it impossible to identify a responsible local educational agency, or the relevant local educational agencies are unable or unwilling to provide special education and related services. The fifth issue alleges that Los Angeles, ABC, and CDE denied Student a FAPE by failing to offer Student placement at an out-of-state residential treatment center at the January and March 2015 IEP team meetings and sets forth legal theories under which either Los Angeles, or ABC, or, as a last resort/by default, CDE might be the agency responsible for offering Student a residential treatment center placement, finally springing him from the hospital.

The amended complaint asserts that either the present legal framework makes it impossible to identify the responsible public agency, raising the second exception to the

general rule that CDE is not responsible for offering individual students a FAPE, or that Los Angeles and ABC have both refused to acknowledge their local educational agency status, making them unable or unwilling to offer Student special education and related services, raising the third exception to the general rule. As such, the amended complaint has asserted facts that would support a finding against CDE.

ORDER

CDE's Motion to Be Dismissed as a Party is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: August 20, 2015

/s/

KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings