

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED
SCHOOL DISTRICT, CALIFORNIA
DEPARTMENT OF EDUCATION AND
CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES.

OAH Case No. 2015080011

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On September 3, 2015, Student's amended complaint was filed with the Office of Administrative Hearings. In the amended complaint, Student alleges that Monterey Peninsula Unified School District denied him a free appropriate public education during the 2013-2014, 2014-2015, and 2015-2016 school years. Student also alleges that the California Department of Education and the Department of Social Services denied Student a FAPE by failing to ensure that appropriate residential treatment facilities are available in California for persons eligible for special education services who, like Student, are between 18 and 22 years of age. Student seeks to have OAH order that CDE and DSS develop residential treatment centers in California for students between the ages of 18 and 22.

On August 31, 2015, CDE filed a motion to dismiss on grounds that it is a state education agency and has only "general oversight responsibility" rather than being responsible for providing Student with a free appropriate public education.

On September 3, 2015, Student filed an opposition to CDE's motion.

On September 8, 2015, CDE filed a reply to Student's opposition.

APPLICABLE LAW AND DISCUSSION

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); see also Ed. Code, § 56501, subd. (a).) 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.) 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 the 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.)

California law places the primary responsibility for providing special education to eligible children on the local education agency, usually the school district in which the parents of the child reside. (See, e.g., Ed. Code §§ 56300, 56340 [describing local educational agency responsibilities].) The law also contemplates that, when a parent disputes the educational services provided to the special needs child, the proper respondent to the due process hearing request is the local education agency. (See, e.g., Ed. Code, 56502, subd. (d)(2)(B) [local education agency’s response to due process complaint].) Only in unusual circumstances does California law deviate from that statutory scheme to require a different entity to provide those services.

Under the Individuals with Disabilities Education Act, 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. §1412(a)(11)(A). CDE is generally not a proper party proper respondent in a due process case under IDEA, because it is not a provider of special education services to children or “involved in any decisions regarding [the] pupil.” (Ed. Code § 56501, subd. (a).)

CDE brought its motion to dismiss on the basis that it is not a proper party to this action because it is not an agency providing special education services to Student. CDE argues that it is not required to ensure the availability of in-state residential placements for students over the age of 18 because the law does not mandate any particular location for residential placements. It also contends that there is no private right of action against the CDE with regard to its general supervisory responsibilities, that it does not license residential facilities in California, and that it has never denied certification of a non-public school providing the educational component of a residential placement made by an local educational agency on the grounds it proposed to serve students over the age of 18.

Student argues that CDE became involved when it failed in its responsibility to ensure that in-state residential placements existed for students between the ages of 18 and 22. Student claims, in effect, that by failing to address this long standing issue with regard to all students, it denied Student a FAPE.

Here, the allegations in the complaint make it clear that CDE did not provide any educational services to Student and that it was not involved in decisions regarding Student. Instead, Student relies upon CDE's general oversight authority of California special education law as the foundation for its claim against the CDE. However, that is not a proper basis for a due process case against CDE under the facts alleged in this case. (See *M.M. v. Lafayette School District* (9th Cir. 2011) 767 F.3d 842, 860.)

In unusual circumstances, such as a situation in which California law fails to designate a local educational agency with responsibility to address a child's education, CDE may be a proper party, by default. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063.) However, Student has not alleged any facts to show that a responsible local educational agency does not exist. Furthermore, CDE may also be 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). However, Student makes no claim of a state school's involvement; thus, this exception is also inapplicable.

Here, Student's claims are beyond the jurisdiction of OAH in a due process case. A due process case examines an individual offer of placement and services to see if it provided a particular child with a FAPE. In this case, OAH has no jurisdiction to order the type of statewide policy changes Student seeks such as ordering CDE to create in-state placements for students over the age of 18. Any remedy addressing Student's allegations against CDE would amount to structural and systemic statewide relief, not just relief for Student. Complaints for such structural and systemic relief are beyond the jurisdiction of OAH. Accordingly, CDE's motion to dismiss is granted.

ORDER

1. California Department of Education's Motion to Dismiss is granted.
2. California Department of Education is dismissed as a party in the above-entitled matter.

DATE: September 21, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings