

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF EDUCATION, NORTHERN
HUMBOLT UNION HIGH SCHOOL DISTRICT, HUMBOLDT COUNTY
OFFICE OF EDUCATION, AND HUMBOLD SPECIAL EDUCATION
LOCAL PLANNING AGENCY, CALIFORNIA HEALTH AND HUMAN
SERVICES AGENCY, DEPARTMENT OF HEALTH CARE SERVICES,
DEPARTMENT OF DEVELOPMENTAL SERVICES, REDWOOD COAST
REGIONAL CENTER, DEPARTMENT OF SOCIAL SERVICES, AND IN
HOME SUPPORT SERVICES.

OAH CASE NUMBER 2021070937

ORDER GRANTING CALIFORNIA DEPARTMENT OF
EDUCATION'S MOTION TO BE DISMISSED AS A PARTY

SEPTEMBER 1, 2021

On July 29, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming California Department of Education, called CDE, and other respondents. The Office of Administrative Hearings is referred to as OAH.

On August 9, 2021, CDE filed a joint notice of insufficiency and motion to dismiss. On August 10, 2021, OAH determined Student's Issue 2 was insufficiently pled against CDE. OAH permitted Student to file an amended complaint within 14 days of the Order Finding Due Process Complaint Insufficient as to California Department of Education.

On August 20, 2021, Student filed an Amended complaint with OAH, naming CDE, Northern Humboldt Unified High School District, Humboldt County Office of Education, Humboldt Special Education Local Planning Agency, California Health and Human Services Agency, Department of Health Care Services, California Children's Services, MediCAL, Department of Developmental Services, Redwood Coast Regional Center, Department of Social Services, and In Home Support Services.

On August 26, 2021, CDE filed a Motion to Dismiss the Amended Complaint alleging OAH lacks jurisdiction to adjudicate issues alleged in the complaint against CDE. On August 28, 2021, Student filed a response to CDE's motion to dismiss.

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.) 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 free appropriate public education 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 School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

Student’s two allegations against CDE in the amended complaint are outside of OAH’s jurisdiction. In Student’s response to the motion to dismiss they explain “a purpose of this due process complaint naming CDE is to clarify the agency responsible for interagency agreements” and “[t]he purpose of bringing this complaint before OAH is to request that CDE create an interagency agreement with California Health and Human Services.” Student’s two allegations against CDE are dismissed because these are not claims over which OAH has jurisdiction.

Student alleges three issues in the amended complaint, two of the issues are alleged against CDE. Issue one alleges that CDE failed to provide a free appropriate public education, referred to as FAPE, to Student, violated Student’s rights under the

IDEA, Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Lanterman Act, and the Social Security Act.

CDE contends that it is not responsible for providing Student a FAPE. CDE asserts that pursuant to the IDEA, it is a state educational agency with only general supervisory responsibility for the overall provision of special education services in California. CDE argues that the complaint makes no claim nor provides any facts that CDE was involved in Student's IEP process or any decisions regarding their education placement. CDE explains that no exceptions apply that would require it to be responsible for the provision of FAPE to Student. CDE denies vicarious liability for an alleged denial of FAPE by a local educational agency, referred to as LEA.

Student's allegations regarding violations of Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, Lanterman Act and Social Security Act are all outside of OAH's jurisdiction. Student's allegations that CDE failed to provide Student a FAPE and violated their rights under the IDEA are not supported by facts that CDE was involved with or responsible for the identification, evaluation, or educational placement, or the provision of FAPE to Student. Accordingly, Student's issue one with regards to CDE is dismissed.

Issue two alleges CDE's inactions impeded Student's access to FAPE because it has failed to resolve or delegate authority for resolving interagency disputes. Student contends that "CDE erred in granting RCRC's motion to dismiss." Student states that "CDE becomes responsible for providing FAPE when an LEA under its supervision cannot or will not serve an eligible individual." Student argues that CDE failed to ensure that LEAs under its supervision provided FAPE to Student in the least restrictive environment.

CDE contends that Student raises issues about interagency agreements that are outside of OAH's jurisdiction. CDE argues that issue two does not include any facts or law alleging a violation of special education law under OAH's jurisdiction. CDE asserts the allegation regarding the regional center's dismissal from this proceeding is not a proper allegation against CDE.

Student's issue two does not raise an issue relating to the identification, evaluation, or educational placement, or the provision of a FAPE to Student. Issue two is focused on Student's intent for CDE to resolve an interagency dispute. OAH does not have jurisdiction to hear such matters. As a result, Student's issue two is dismissed.

ORDER

1. California Department of Education's motion to be dismissed as a party is granted.
2. The matter shall proceed as scheduled as it pertains to the other named respondents.

IT IS SO ORDERED.

Marlo Nisperos

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings