

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PLACER UNION HIGH SCHOOL DISTRICT; CALIFORNIA HERITAGE
YOUTHBUILD ACADEMY II, NEVADA JOINT UNION HIGH SCHOOL
DISTRICT, AND CALIFORNIA DEPARTMENT OF EDUCATION.

OAH CASE NUMBER 2021090280

ORDER GRANTING CALIFORNIA DEPARTMENT OF
EDUCATION'S MOTION TO DISMISS

OCTOBER 1, 2021

On September 8, 2021, Student filed a Due Process Hearing Request, called a complaint, with the Office of Administrative Hearings, naming Placer Union High School District, California Heritage Youthbuild Academy II, Sonoma Valley Unified School District, Nevada Joint Union High School District, California Department of Education, Sonoma County Office of Education and Placer County Children's System of Care. The Office of Administrative Hearings is referred to as OAH.

Student dismissed Sonoma County Office of Education on September 17, 2021. On September 21, 2021, OAH issued an Order of Determination of Insufficiency of Due Process Complaint as to Placer County Children's System of Care and dismissed it as a party.

On September 24, 2021, California Department of Education filed a Motion to Dismiss alleging OAH lacks jurisdiction to adjudicate the issues alleged against it in the complaint. On September 29, 2021, Student filed an opposition to California Department of Education's motion to dismiss.

APPLICABLE LAW

OAH has jurisdiction only over claims alleging the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called IDEA, or California special education laws were violated. The purpose of the IDEA 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.)

Under the IDEA, 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).) The California Education Code permits a party the 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 or 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. (Ed. Code, § 56501, subd. (a).) 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.)

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 “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.)

The IDEA requires states to develop programs for ensuring that the mandates of the IDEA are met and that children eligible for special education receive a FAPE. (20 U.S.C. § 1412(a).) California law places the primary responsibility for providing special education to eligible children on the local educational agency; usually the school district in which the parent of the child resides. (See, e.g., Ed. Code, §§ 48200, 56300, 56340 [describing local educational agency responsibilities], 56344, subd. (c).) When a parent disputes the educational services provided to the child with a disability, the proper party to the due process hearing is the local educational agency. (See, e.g., Ed. Code, § 56502, subd. (d)(2)(B).) Local educational agency is defined as “a school district, a county office of education, a nonprofit charter school participating as a member of a special education local plan area, or a special education local plan area.” (Ed. Code, § 56026.3.) The local educational agency is responsible to identify children with disabilities, determine appropriate educational placements and services, and to provide special education and related services. (Ed. Code, §§ 48200, 56300, 56302, 56340, 56344, subd. (c).)

Under the IDEA, a state educational agency, such as the California Department of Education, is responsible for the “general supervision” of state special education programs to ensure the IDEA requirements are met. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a).) A state educational agency is defined as “the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools . . .” (20 U.S.C. § 1401(32); 34 C.F.R. § 300.41.) Generally, the California Department of Education is not a proper party to a due process complaint 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).) In some limited circumstances the California Department of Education may be the responsible public agency in a due process hearing. For example, it may be the responsible public agency in due process hearings involving students attending state schools for the deaf and for the blind, if it operates those schools. (Ed. Code, §§ 59002, 59102.) The California Department of Education also may be a proper party, by default, where California law fails to designate a local educational agency with responsibility to address a child’s education. (*Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1062.) Further, the Ninth Circuit has suggested there is no private right of action against the California Department of Education for breach of its general oversight duties under title 20 of the United States Code, section 1412(a). (*M.M. v. Lafayette School Dist.* (9th Cir. 2014) 767 F.3d 842, 860-861 [district court’s order dismissing individual student’s claims against the California Department of Education affirmed]; see also *M.C. v. Los Angeles Unified School Dist., et al.* (C.D. Cal. Sept. 9, 2021, Case No.: CV 20-9127-CBM(Ex)) __F.Supp.__, 2021 WL 4099252.)

DISCUSSION

The complaint alleges Student was placed in a variety of educational settings for his safety and welfare by the Placer County Children's System of Care. The complaint initially named seven agencies, including the California Department of Education, as responsible local educational agencies. Student alleges the California Department of Education denied Student a FAPE during the 2019-2020, 2020-2021, and 2021-2022 school years by, "denying the parents meaningful participation in the [individualized education program] process by failing to provide a single educational agency that remains responsible for a child in the child welfare system".

The complaint does not allege any specific facts suggesting the California Department of Education was involved in any decisions regarding the identification, assessment or educational placement of Student, or the provision of any special education or related services to Student. Instead, Student generally argues the California Department of Education's responsibilities under the IDEA extend beyond general supervision of educational programs to include responsibility for its alleged failure to assign one responsible local education agency for students in the child welfare system. Student argues because the local educational agency responsible for the provision of his educational program changed each time his placement changed the California Department of Education should have "stepped in" to ensure consistency in Student's educational program.

Student relies primarily on *Orange County Department of Education v. California Department of Education*, *supra*, 668 F.3d 1052, in support of his argument that the California Department of Education is a responsible public agency by, "allowing a statutory scheme which leads to a change of responsible local educational agency every

time [Student] is relocated by Sonoma or Placer County child welfare services.” Student’s applies an overly broad interpretation of the Ninth Circuit’s holding.

In *Orange County Department of Education*, the Ninth Circuit considered the narrow issue of which California agency was responsible for funding a special education student’s education in an out-of-state residential treatment facility where the student had no parent. The general rule under California law is that the school district responsible for the education of a child between the ages of six and eighteen is the district in which the child’s “parent or legal guardian” resides. (Ed. Code, § 48200.) At the time the student was placed in the out-of-state residential setting, the California legislature had not yet amended section 56028 of the California Education Code to provide, that, “[if] a judicial decree or order identifies a specific person or persons under Education Code section 56028(a)(1)-(4) of Part 30 (‘Special Education Programs’) to act as the ‘parent’ of a child or to make educational decision on behalf of a child, then that person or persons shall be determined to be the ‘parent’ for purposes of . . . Article 1 (commencing with section 48200) of Chapter 2 of Part 27.” (*Id.*, at p. 1056.) The Ninth Circuit therefore first considered which definition of “parent” applied to California Education Code section 48200. The court determined the definition of “parent” under Education Code section 56028 applied to section 48200 at the time of student’s placement. (*Id.* at p. 1058.)

The Ninth Circuit next considered whether the student’s former foster parent was a “parent” under the California Education Code for the purpose of determining which California agency was responsible for funding student’s education. The court determined student’s foster parent was not his “parent” for purposes of Education Code sections 56028 or 48200 at the time student’s out-of-state residential placement began. The court held that because student did not have a “parent” during the pertinent time

period, there was no school district responsible for student's education under California law. Under this specific circumstance, the court held the California Department of Education was the agency responsible for student's education for the pertinent time period. (*Id.*, at p. 1063; 20 U.S.C. § 1412(a)(11)(1) ["The State educational agency is responsible for ensuring that . . . the requirements of this subchapter are met."].)

Unlike the student in *Orange County Department of Education*, Student's complaint alleges he has a parent and identifies multiple potentially responsible local educational agencies. Therefore, Student has identified designated agencies that are responsible under California law for funding Student's education and the California Department of Education would not, by default, be the responsible agency.

Student further argues the California Department of Education denied Student a FAPE by failing to provide a "single" educational agency that remained responsible for Student while he is in the child welfare system. Student cites to no state or federal authority for this position, other than referring to California Department Education's responsibility for ensuring the requirements of the IDEA are met. (20 U.S.C. § 1412(a)(11)(A).) California Department of Education's general oversight responsibility is not sufficient to make it a responsible party in a due process hearing. (See, e.g., *Parent on Behalf of Student v. Fresno County Department of Social Services, et al.* (August 10, 2017) OAH Case No. 2017070678.)

California Department of Education's general supervision of educational programs for children with disabilities is not within OAH's jurisdiction. Further, Student's claim that the California Department of Education was responsible for ensuring Student was placed in a single local educational agency is outside OAH's jurisdiction. Student's complaint fails to allege how the California Department of Education is a public agency

over which OAH has jurisdiction. Accordingly, California Department of Education's motion to be dismissed 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 this matter.
3. This matter shall proceed as to the remaining parties as scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings