

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ONTARIO-MONTCLAIR SCHOOL DISTRICT.

OAH CASE NUMBER 2021090383

ORDER GRANTING MOTION TO DISMISS

OCTOBER 6, 2021

On September 13, 2021, Student filed a Due Process Hearing Request with the Office of Administrative Hearings, called OAH, naming Ontario-Montclair School District. On September 28, 2021, Ontario-Montclair filed a Motion to Dismiss the complaint. OAH did not receive a response from Student.

Student's complaint alleges that Student attends Allegiance STEAM Academy charter school. The complaint alleges Ontario-Montclair denied Student a free appropriate public education, called FAPE, by failing to implement Student's individualized education program, called IEP, during the 2020 Covid-19 Pandemic school closures. Student also alleges violations of Section 504 of the Rehabilitation Act of 1973, and Title 29 United States Code section 794, et. seq. As proposed resolutions, Student seeks a "stay put" order requiring the "School District" to implement the IEP,

reimbursement for parental expenses, an order for comprehensive assessments, and compensatory remedies including attorney's fees.

Ontario-Montclair argues that Allegiance STEAM Academy is a charter school, chartered by Chino Valley Unified School District. Ontario-Montclair contends it is not a proper party because it is not and was not the local educational agency responsible for providing Student a FAPE under Student's IEP during the relevant time period. Ontario-Montclair also challenges Student's alleged failure to properly file and serve the complaint, alleging Student only emailed the complaint to Ontario-Montclair's superintendent of schools. The school district supported its motion to dismiss with a sworn declaration by Alana Hughes-Hunter, Executive Director of the Ontario-Montclair Special Education Local Plan Area, called SELPA, a declaration from its counsel, and verified attachments.

There is no summary judgment procedure in special education cases in California. OAH will, however, dismiss allegations and cases not within its jurisdiction. OAH has jurisdiction only over claims alleging the Individuals with Disabilities Education Act or California special education laws were violated. Special education due process hearings may involve the parent or guardian, a student, and "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.)

First, Ontario-Montclair's contention that the complaint was not properly served was not significant or grounds for dismissal here, because Ontario-Montclair filed this Motion within 15 days after the complaint was received by the OAH, establishing the school district did not suffer any significant prejudice by any deficiency in service.

More important, Student's complaint does not allege how Ontario-Montclair is a public agency over which OAH has jurisdiction in this case, other than by identifying Student's address as being in Ontario, California. On the other hand, Ontario-Montclair established through credible evidence that it is not the SELPA under which Allegiance holds its charter, such that it would be potentially responsible for the FAPE claims alleged in the complaint, conferring jurisdiction by OAH over those claims against it. In a January 23, 2020 School Accountability Report Card by Allegiance STEAM Academy – Thrive, Allegiance reports under "Contact Information" that the "District Name" is "Chino Valley Unified." Additionally, Allegiance reports under "About This School" that "ASA is a classroom-based charter school authorized by the Chino Valley Unified School District and located in the city of Chino in the county of San Bernardino." Allegiance does not identify anywhere in the complaint that Ontario-Montclair is the responsible local educational agency for Allegiance or how it is a proper party to the claims alleged in the complaint.

OAH has no jurisdiction over Student's claims as they relate to Ontario-Montclair. Student has not named any other responsible local educational agencies. The motion to dismiss the complaint is granted. All dates are vacated.

IT IS SO ORDERED

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings