BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. LAS LOMITAS ELEMENTARY SCHOOL DISTRICT, SEQUOIA UNION HIGH SCHOOL DISTRICT, AND SAN MATEO COUNTY SPECIAL EDUCATION LOCAL PLAN AREA.	OAH Case No. 2017050461 ORDER DENYING STUDENT'S MOTION TO STRIKE SEQUOIA'S MOTION TO DISMISS; ORDER DENYING IN PART AND GRANTING IN PART SEQUOIA'S MOTION TO DISMISS; AND ORDER GRANTING SAN MATEO SELPA'S MOTION TO BE DISMISSED AS A PARTY

On May 9, 2017, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Las Lomitas Elementary School District, Sequoia Union High School District, and San Mateo County Special Education Local Plan Area.

On May 15, 2017, San Mateo filed a motion to be dismissed as a party with OAH on the basis that, as a SELPA, it was not responsible for the provision of a free appropriate public education to Student, had not made educational decisions about Student, and was not a proper entity to this due process action.

On May 16, 2017, Sequoia Union High School District filed a motion to dismiss Student's complaint in its entirety; Sequoia moved to dismiss Student's claims arising under the Individuals with Disabilities Education Act on the basis that they were not ripe, and to dismiss all of Student's other claims on the basis that OAH does not have jurisdiction over claims arising under the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, Government Code section 11135, the Unruh Civil Rights Act (Civil Code, § 51 *et seq.),* and California Civil Code sections 54 and 54.1.

On May 23, 2017, Student filed an opposition to San Mateo's motion to dismiss the SELPA as a party. Student argues San Mateo should remain in the case for exhaustion of administrative remedies and an initial opportunity for San Mateo to ascertain and alleviate the alleged problem.

Also on May 23, 2017, Student filed a motion to strike Sequoia's motion to dismiss Student's complaint due to Sequoia's failure to serve Student with the motion and to notify OAH of defective service. In the alternative, Student requested to reset Student's deadline to file a response to Sequoia's motion to dismiss based on Student's receipt of Sequoia's motion on May 22, 2017.

On May 23, 2017, Sequoia filed a response to Student's motion to strike Sequoia's motion to dismiss Student's complaint. Sequoia opposed striking its motion to dismiss and did not oppose resetting Student's time to file a response to Sequoia's motion to dismiss based on Sequoia's delayed service of its motion on Student.

On May 24, 2017, Las Lomitas Elementary School District filed a joinder in Sequoia's response to Student's motion to strike Sequoia's motion to dismiss Student's complaint. Las Lomitas opposed striking Sequoia's motion as a consequence for Sequoia's service error and did not oppose resetting Student's time to file a response to Sequoia's motion to dismiss based on Sequoia's delayed service of its motion on Student.

On May 25, 2017, Student filed a substantive opposition to Sequoia's motion to dismiss Student's complaint.

On May 26, 2017, Sequoia filed a reply regarding its motion to dismiss Student's complaint.

DISCUSSION

Service of Motions and Timeline for Response

The Scheduling Order in this case, dated May 11, 2017, required all prehearing motions to be served upon the opposing parties and filed with OAH. Any opposition must be received by OAH no later than 3 business days after service of the motion.

Student established that Sequoia used an incorrect email address to serve Student's attorney with its motion to dismiss Student's complaint. Student's attorney contends he made this discovery on Sunday, May 21, 2017, upon reviewing a joinder Las Lomitas filed, which he believed concerned San Mateo's motion to be dismissed as a party but "[o]n closer look, Las Lomitas' joinder was to [Sequoia]'s Motion to Dismiss, not the SELPA's." OAH only received one joinder from Las Lomitas, and it was to Sequoia's opposition to Student's motion to Strike Sequoia's motion to dismiss based on the failure to serve Student, filed on May 24, 2017. Student's purported basis for discovering that he had not been served with Sequoia's motion upon receipt of Las Lomitas' joinder is not supported by other facts, but review of Sequoia's proof of service and documents filed in support of Student's motion to strike verify Sequoia served an incorrect email address on May 16, 2017, and Student did not receive Sequoia's motion to dismiss on that date. Student's attorney was served by email to the correct address on May 22, 2017.

Sequoia and Las Lomitas agreed to reset the timeline for Student to respond to Sequoia's motion to dismiss Student's complaint. Student filed a substantive opposition on May 25, 2017. Therefore, there is no reason to strike Sequoia's motion to dismiss Student's complaint. Student's motion to strike is denied.

Claims Outside OAH Jurisdiction

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 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].) 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 does not have jurisdiction to entertain claims based on the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Unruh Civil Rights Act (Civ. Code, § 51), or any other federal or state statutes regarding civil rights or the rights of individuals with disabilities.

Student's "Allegation No. 3" through "Allegation No. 7" specifically allege violation of and seek remedies available pursuant to the ADA, Section 504, Government Code section 11135, Unruh, and Government Code sections 54 and 54.1 Student acknowledges these claims were made to exhaust administrative remedies. Student opposes dismissal of these claims, and argues he should be allowed to pursue these claims to afford the respondents an initial opportunity to ascertain and alleviate the alleged problem. However, OAH lacks jurisdiction to hear these claims and they are therefore dismissed.

Student's "Allegation No. 1" and "Allegation No. 2" specifically allege violation of the IDEA and enabling state statutes. Student alleges Las Lomitas held an individualized education program team meeting on January 31, 2017, to discuss Student's transition from middle school to high school at the end of the 2016-2017 school year. Although not contained in Student's complaint, Exhibit A to Student's opposition to Sequoia's motion to dismiss Student's complaint indicates the process for middle school students to enroll in high school within Sequoia Union High School District begins in November the year before a student expects to matriculate to high school. For students who want to attend a high school

within Sequoia that is not the school to which they would be assigned based on their home address, an open enrollment process begins in October and ends on February 3 of the school year before the student expects to matriculate to high school. Student alleges on January 31, 2017, the IEP team recommended and offered placement for the 2017-2018 school year at Woodside High School. Student alleges that based on his home address, he would have been assigned to Menlo-Atherton High School, but the IEP team recommended Woodside based on the program available there and the continuity of peer group Student would have based on having attended La Entrada for middle school. Student alleges the January 31, 2017 IEP offered him transportation to Woodside as a necessary related service. Student alleges that when he accessed Sequoia's mandatory online system for open enrollment to apply to attend Woodside, Sequoia required him to waive his right to transportation before he could proceed with the open enrollment process. Student alleges Sequoia's requirement that he waive his right to transportation, which an IEP team determined was a necessary related service for him to attend the appropriate placement and to receive a FAPE, before he could enroll in the appropriate placement constitutes a denial of FAPE. Student's allegations adequately plead a claim under the IDEA and enabling state statutes regarding the provision of a FAPE to Student.

Sequoia contends it did not participate in the January 31, 2017 IEP team meeting, has not offered Student any placement, and has not denied Student any related service. Sequoia asserts any claim under the IDEA and enabling state statutes is not ripe because Sequoia has had no interaction with Student that would support a finding that it denied Student a FAPE. Sequoia argues because Student did not actually apply for enrollment at Woodside, Sequoia cannot possibly have denied Student a FAPE. Student argues he could not apply for enrollment at Woodside via the mandatory online open enrollment system because to proceed with his application he was required to waive his right to transportation, which had been determined by the January 31, 2017 IEP team to be a necessary related service. Student's allegations, if true, could support a finding that Sequoia denied Student a FAPE. The IDEA does not have a process for the summary adjudication of claims and on the facts alleged in this case, OAH cannot deny Student the opportunity to present his claim against Sequoia. Accordingly, Sequoia's motion to dismiss the IDEA and Education Code claims against it is denied.

SELPA as a Party

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.)

Student's complaint does not allege that San Mateo SELPA provided or provides special education or related services to Student. Student's dissatisfaction with San Mateo SELPA stems from San Mateo's alleged failure to "promulgate policies, procedures, and

assure that districts and programs within its area act in a manner that is consistent with state laws, regulations, and policies that comply with the IDEA, and state and federal anti-discrimination laws, such as the Rehabilitation Act of 1973, ADA, and the Unruh Act." Student specifically contends San Mateo "failed to assure that the Sequoia Union High School District's intradistrict open enrollment process complies with anti-discrimination laws and does not deny [Student] and similarly situated children with IEP's the grant of transportation as a related service, in order to be placed in the appropriate placement identified by the IEP."

As stated above, Student's claims regarding the ADA, Section 504, Unruh, and other civil rights or anti-discrimination laws are dismissed as beyond OAH's jurisdiction. Student's allegations against San Mateo are in the nature of a class action on behalf of "similarly situated children" with IEPs that offered transportation as a related service. Student does not allege San Mateo was "involved in any decisions regarding" Student's placement or related services. San Mateo is not a proper party and San Mateo SELPA's motion to be dismissed as a party is granted.

ORDER

1. Student's motion to strike Sequoia's motion to dismiss Student's complaint is denied.

2. Sequoia's motion to dismiss Student's complaint as to IDEA and Education Code claims is denied.

3. Sequoia's motion to dismiss Student's complaint as to ADA, Section 504, Government Code section 11135, Unruh, and Civil Code sections 54 and 54.1 claims is granted. The matter will proceed as scheduled as to the remaining issues.

4. San Mateo SELPA's motion to be dismissed as a party is granted. San Mateo SELPA is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining parties, Las Lomitas Elementary School District and Sequoia Union High School District.

DATE: May 31, 2017

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Kara Hatfield
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KARA HATFIELD
Administrative Law Judge
Office of Administrative Hearings