BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT, CALIFORNIA DEPARTMENT OF EDUCATION, HARBOR REGIONAL CENTER, AND CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES.

OAH CASE NUMBER 2019070571

ORDER DISMISSING PARTY FOR LACK OF JURISDICTION

On July 15, 2019, Student filed with the Office of Administrative Hearings, often called OAH, a Due Process Hearing Request naming Long Beach Unified School District, California Department of Education, Harbor Regional Center, and California Department of Developmental Services as parties.

On July 25, 2019, the California Department of Education filed a motion to be dismissed as a party to this proceeding. Student has not filed a response.

APPLICABLE LAW

Under the Individuals with Disabilities Education Act, referred to as the IDEA, 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).) Of accord, the California Education Code affords a party the right to present a complaint regarding matters involving a 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 Sch. 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, 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 education agency, usually the school district in which the parents of the child reside. (See, e.g., Ed. Code §§ 48200, 56300, 56340

[describing local educational agency responsibilities], 56344, subd. (c).) The law also contemplates that when a parent disputes the educational services provided to the special needs child, the proper party 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].)

Under the IDEA, a state educational agency such as the California Department of Education 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); 34 C.F.R. § 300.149.) The Ninth Circuit Court of Appeal has determined that 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.)

Generally, the California Department of Education is not a proper party to a due process case under the 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).) However, the California Department of Education may be the responsible public agency in due process hearings involving students attending the state schools for the deaf and for the blind, as it operates these schools. (Ed. Code, §§ 59002, 59102).

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, the California Department of Education 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.) OAH will grant motions to dismiss claims that are facially outside of its jurisdiction, including when the named entity is not legally responsible under the facts alleged for providing special education and related services under the IDEA.

DISCUSSION

Student's complaint raises numerous allegations regarding the action or inaction of Long Beach Unified School District. For example, Student claims the school district refused to include Parent's proposed goals and services in Student's individualized education program, ignored standardized testing results, and refused to change Student's placement. Similarly, all of Student's proposed resolutions are directed to the school district.

The California Department of Education contends that it is not a proper party to this matter as it is not and was not responsible for providing a FAPE to Student. While Student's complaint lists the California Department of Education as a party, it fails to raise any allegations against it or make any reference to it. Student does not allege that the California Department of Education provided any educational services to Student, made any educational decisions specifically related to Student, or was involved with Student's education as a local educational agency. As such, Student's complaint fails to allege how the California Department of Education is a public agency over which OAH has jurisdiction. Accordingly, the California Department of Education's motion to be dismissed is granted.

ORDER

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

3. The matter will proceed as scheduled as to the remaining parties.

DATED: July 31, 2019

DocuSigned by:
Theresa Ravandi
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Theresa Ravandi
Administrative Law Judge
Office of Administrative Hearings