

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

STUDENT,

v.

ORANGE COUNTY DEPARTMENT OF
EDUCATION, IRVINE UNIFIED SCHOOL
DISTRICT AND CALIFORNIA
DEPARTMENT OF EDUCATION,

OAH CASE NO. 2009090943

ORANGE COUNTY DEPARTMENT OF
EDUCATION,

v.

STUDENT.

OAH CASE NO. 2009100565

ORDER DENYING MOTION TO
DISMISS

On September 21, 2009, Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (Student's complaint) against the Orange County Department of Education (OCDE), Irvine Unified School District (District) and California Department of Education (CDE). This matter was designated as OAH Case No. 2009090943.

On September 23, 2009, OAH issued a Scheduling Order and Notice of Due Process Hearing in Case No. 2009090943. The mediation is scheduled for October 28, 2009, Prehearing Conference for November 4, 2009, at 10:00 a.m., and Due Process Hearing for November 12, 2009.

On October 8, 2009, OCDOE filed a Request for Due Process Hearing (OCDE's complaint) against Student, along with a motion to consolidate the two cases. The second matter was designated as Case No. 2009100565. On October 20, 2009, OAH granted the consolidation motion and ordered the above scheduled dates to proceed as to the consolidated matter.

On October 13, 2009, CDE filed a Motion to Dismiss Case No. 2009090943 as to CDE. On October 16, 2009, OCDE filed an opposition to the motion. Neither Student nor the District has filed any response.

APPLICABLE LAW

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.)

DISCUSSION

CDE’s motion to dismiss Student’s complaint in Case No. 2009090943 as to CDE is based on the grounds that Student’s complaint “fails to state any action by CDE or legal authority that creates a duty in CDE to provide or fund a free appropriate public education(FAPE)” to Student. CDE’s motion is not supported by any evidence.

Student’s complaint sets forth three areas of problems for the 2007-2008, 2008-2009, and 2009-2010 school years (including extended school years) against all respondents. As to CDE in particular, Student’s first problem claims that either CDE or the District was the public agency responsible for his education for the 2007-2008 school year. For all school years at issue, Student also claims that CDE also failed to legislatively provide for a definition of who is responsible for “parentless, foster children in an educational RTC [residential treatment center] placement over the age of 18,” before January 1, 2009.

On October 7, 2009, OAH denied the sufficiency and dismissal motion of OCDE as to one of Student’s issues in Case No. 2009090943. In so doing, the ALJ stated:

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.... However, there is no authority under the IDEA or state law that requires OAH to hear the equivalent of a motion to dismiss for failure to state a claim on which relief can be granted.

In addition, on October 6, 2009, OAH granted Student’s motion for stay put in Case No. 2009090943, but denied Student’s motion to determine, in advance of the hearing, “which public agency is financially responsible for payment of his out-of-state residential placement at Daystar.” In so doing, the ALJ held that the issue “should be resolved only after taking evidence at hearing.”

Since which public agency is responsible for Student’s education at various times during the school years involved in this consolidated matter is at the heart of Student’s problems, the issue is capable of resolution only after an evidentiary hearing at which all parties have the opportunity to submit competent and relevant evidence. CDE has not

submitted any evidence in support of its contention that it is not a public agency responsible for Student's education. Accordingly, the motion to dismiss the case as to CDE is denied.

ORDER

CDE's Motion to Dismiss Case No. 2009090943 as to CDE is denied. The matter shall proceed as scheduled.

Dated: October 20, 2009

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings