

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION

OAH CASE NO. 2012030888

ORDER DENYING MOTION TO
DISMISS

On March 22, 2012, Student filed a request for due process hearing (complaint) naming California Department of Education (CDE) as the respondent. The complaint alleged that California School for the Deaf (CSD) and California School for the Blind (CSB), both in Fremont, California, had denied Student a free appropriate public education (FAPE) by failing to assess him during the 2010-2011 and 2011-2012 school years.

On March 29, 2012, CDE filed a Motion to Dismiss, arguing that Office of Administrative Hearings (OAH) lacks jurisdiction over CDE as a proper party in this case because CDE was not the local educational agency (LEA) responsible for providing Student with a FAPE. CDE's Motion further argued that although CSD and CSB operate under the auspices of CDE, those entities only conduct assessments when referred by Student's LEA, and when such assessments are judged to be appropriate. CDE's Motion then stated factual assertions that Student's LEA had, in fact, referred Student to CSD and CSB for assessments, however those entities declined to assess him, finding that Student was neither vision- nor hearing-impaired, and thus that such assessments were not appropriate.

On March 30, 2012, Student filed an opposition to District's Motion, in which Student made factual counter-arguments regarding his vision and hearing, and alleging that the assessments at issue were agreed upon between Student and his LEA pursuant to the terms of a Settlement Agreement between them. On April 5, 2012, CDE filed a reply responding to Student's factual assertions regarding Student's vision and hearing.

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 under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

“Related services” includes the early identification and assessment of disabling conditions in children. (Ed. Code, § 56363, subd. (a).)

Although 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.....), special education law does not provide for a summary judgment procedure.

DISCUSSION

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. CDE’s Motion and Reply confirm that CDE, through the CSD and CSB programs operating under its auspices, was “involved in” decisions regarding “related services” for Student, specifically whether or not to assess him. Thus, applying Education Code sections 56501, subdivision (a), 56028.5, and 56363, subdivision (a), CDE, through CSD and CSB, was a public agency who made a decision about providing related services in the form of assessments to Student, and thus, is a proper party in a due process hearing under California law. Accordingly, OAH has jurisdiction over CDE as a proper party in this case, and the motion is denied. All dates currently set in this matter are confirmed.

ORDER

CDE’s Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: April 09, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings