

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL
DISTRICT, CALIFORNIA DEPARTMENT
OF EDUCATION.

OAH CASE NO. 2012070635

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On August 2, 2012, Student's parent (Parent) filed an amended due process hearing request (complaint) naming the Fremont Union High School District and the California Department of Education (CDE). On August 2, 2012, CDE filed a motion to dismiss the amended complaint. On August 7, 2012, Parent filed an opposition to the motion.

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.)

California law places the primary responsibility for providing special education to eligible children on the local education agency (LEA), usually the school district in which the parents of the child reside. (See, e.g., Ed. Code §§ 56300, 56340 [describing LEA responsibilities].) The law also contemplates that, when a parent disputes the educational services provided to the special needs child, the proper respondent to the due process hearing request is the LEA. (See, e.g., Ed. Code, 56502, subd. (d)(2)(B) [LEA's response to due process complaint].) Only in unusual circumstances does California law deviate from that statutory scheme to require a different entity to provide those services.

Although CDE has general oversight responsibility for special education in California, it is not usually a proper respondent in a due process case under IDEA, because it is not a provider of special education services to children. (Ed. Code § 56501, subd. (a).) An exception to this general rule involves the children in the state schools for the deaf or blind. (Ed. Code, §§ 59002; 59102.)

DISCUSSION

Parent alleges that Student is a 19-year-old man who is eligible for special education. Student has never been conserved and currently holds his own educational rights. Parent has begun conservatorship proceedings, but no ruling has yet been made.

Parent does not allege that CDE provided any educational services to Student or was involved with Student's education as an LEA. Instead, Parent alleges that CDE denied Student a FAPE by failing to ensure adequate residential placements within California for adults between the ages of 18 and 22, and by failing to create a procedure for requiring a school district to appoint an educational representative for an incompetent adult.

The general oversight authority of CDE is not sufficient to sustain a due process complaint. In unusual circumstances, such as a situation in which California law fails to designate an LEA with responsibility to address a child's education, CDE may sometimes be a proper party. (See *Orange County Department of Education v. California Department of Education* (2011) 668 F.3d 1052.) However, Parent has not alleged any facts or law to show such a circumstance in this case.

Parent's allegations against CDE are beyond the limited jurisdiction of OAH in a due process case. A due process case looks at an individual offer of placement and services to see if it would provide a child with a FAPE. OAH has no jurisdiction to order CDE to procure placements or tell CDE which regulations to promulgate or procedures to institute.¹

ORDER

The motion is granted. The California Department of Education is hereby dismissed from this action.

IT IS SO ORDERED.

Dated: August 13, 2012

/s/

SUSAN RUFF

Administrative Law Judge

Office of Administrative Hearings

¹ Because CDE's motion is granted based on the jurisdictional issue, there is no need to discuss the other grounds for dismissal in CDE's motion (such as lack of standing).