

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013010872

ORDER GRANTING MOTION TO
DISMISS

On January 25, 2013, Student filed a Request for Due Process Hearing (complaint), naming San Diego Unified School District (District) as the respondent.

On February 8, 2013, District filed a Motion to Dismiss, alleging that District was not a proper party to this action. District contends that Student's complaint is regarding O'Farrell Charter School (Charter) which acts as its own local educational agency (LEA) for purposes of special education and therefore District has no responsibility for the provision of a free appropriate public education to Student.

OAH received no response to the Motion to Dismiss from Student.

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

In the present matter, Student claims that the school psychologist at O'Farrell Charter School refused to assess her for special education. Student lists O'Farrell Charter School as the school in her complaint and lists the school District as San Diego Unified School District.

District contends that Charter and the El Dorado Special Education Local Plan Area (SELPA), not District, are responsible for Student's special education. To support its position, District provided copies of the Memorandum of Understanding between the

District and the Charter showing that the Charter and SELPA are responsible for the provision of special education services to students enrolled in Charter.

The District also provided a current copy of the charter for Charter which also indicates clearly that Charter will act as its own LEA for purposes of special education.

Further, there are no claims against the District for Student's enrollment in a school for which District is the LEA, Student did not attend a District school at any time during the time period associated with the complaint and none of the allegations are directed toward the District or its staff.

Therefore, District is not the public agency, or LEA, involved in decisions regarding student or providing special education or related services to Student and is not a proper party to Student's complaint.

ORDER

San Diego Unified School District's Motion to Dismiss is granted. The matter is dismissed.¹

IT IS SO ORDERED.

Dated: February 14, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings

¹ This Order does not limit Student's ability to refile the complaint against the O'Farrell Charter School.