

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CONSERVATOR ON BEHALF OF
STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL
DISTRICT and SAN MATEO COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2013061131

ORDER GRANTING IN PART AND
DENYING IN PART SAN MATEO
COUNTY OFFICE OF EDUCATION'S
MOTION TO DISMISS

On June 26, 2013, Student, through his conservator (who is his mother) filed a request for due process (complaint) naming the San Mateo Union High School District (District) and the San Mateo County Office of Education (SMCOE). Student raises 14 issues in his complaint. Of these issues, only issues 12, 13, and 14 raise allegations against SMCOE. Student contends that he began attending a special education program conducted by SMCOE on behalf of the District on April 10, 2013, and that this program fails to provide him with a free appropriate public education for a variety of reasons. Student contends that his conservator met with a representative of SMCOE prior to April 10, 2013, and that this representative was involved in the process to provide an individualized education plan (IEP) to Student in preparation for his return to school.

In issue 12, Student contends that the District and SMCOE failed to provide him with necessary speech and language services from April 10, 2013, to the present. In issue 13, Student contends that SMCOE failed in its obligation to supervise and provide placement and services for Student when the District failed to do so. In issue 14, Student contends that the District and SMCOE unlawfully discriminated against Student in violation of title 29 United States Code section 794(a) (otherwise known as Section 504 of the Rehabilitation Act) and title 42 United States Code section 1983.

On July 5, 2013, SMCOE filed a motion to dismiss it as a party. SMCOE asserts that issue 12 should be dismissed because it was not responsible for providing Student with special education services. Rather, SMCOE asserts that the District contracted with it to provide Student with those services and, therefore, SMCOE was acting in the capacity of any other private service provider. SMCOE asserts that there is no independent contractual or legal relationship between it and Student. SMCOE contends that Student's issue 13 should be dismissed because Student is raising a respondent superior allegation against it rather than stating that SMCOE has or had an independent obligation to provide Student with special education and related services. As to issue 14, SMCOE contends that it should be dismissed

as the federal statutes cited as the basis for this allegation as outside of the jurisdiction of the Office of Administrative Hearings (OAH).

Neither Student nor the District has filed an opposition or other response to SMCOE's motion to dismiss.

For the following reasons, SMCOE's motion to dismiss is denied as to Student's issue 12, but granted as to Student's issues 13 and 14.

APPLICABLE LAW AND DISCUSSION

Student's Issue 12

Student contends that his difficulties obtaining appropriate special education and related services extend back to June 2010, when the District failed to provide him with appropriate home hospital educational services after Student was unable to attend school for medical reasons. He contends that eventually, in early April 2013, his conservator met with a representative from SMCOE who told her that an IEP would be held for Student. Subsequent to the IEP meeting, Student was placed in a program conducted by SMCOE on behalf of the District. Student contends that this program, which he continues to attend, fails to provide him with necessary speech and language services.

SMCOE argues that it is not a proper party because it merely contracts with the District to provide special education services to Student. It argues that it is akin to a private provider and should be considered as such since it is the District that has a legal obligation to provide Student with a free appropriate public education.

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.) SMCOE therefore is a proper party to a due process complaint.

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

SMCOE's contention that it is not a proper party because it has contracted with the District to provide services to Student is a factual dispute because, contrary to SMCOE's assertions, Student's complaint contends that SMCOE was, in fact, responsible for Student's education. Resolving the issue requires weighing evidence to be presented by the parties.

SMCOE's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on disputed matters of fact. SMCOE fails to cite to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or a motion for summary judgment prior to giving Student, as petitioner, the opportunity to develop a factual record for hearing on issues properly within the contours of a due process complaint.

In its motion to dismiss, SMCOE raises issues which are more properly affirmative defenses to Student's complaint. SMCOE, as a county office of education, is a proper party to a due process complaint. Whether it had a responsibility to the student in *this* case is a question of fact to be determined based on evidence submitted at a due process hearing. SMCOE's motion to dismiss issue 12 of Student's complaint is denied without prejudice to SMCOE presenting its affirmative defenses at hearing.

Student's Issue 13

In issue 13, Student contends that SMCOE failed in its obligation to properly supervise and provide an appropriate placement and services for Student when the District allegedly failed to do so. Student provides no legal basis for his argument that SMCOE has a legal obligation to supervise the District to ensure that the District follows state and federal law in providing special education and related services to Student or to any other pupil. For this reason, Student's issue 13 is dismissed in its entirety.

Student's Issue 14

In issue 14, Student contends that SMCOE and the District unlawfully discriminated against him in violation of title 29 United States Code section 794(a) (otherwise known as the Rehabilitation Act of 1973) and title 42 United States Code section 1983.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a 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].) 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.) Thus, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or title 42 United States Code section 1983. Since OAH does not

have jurisdiction over allegations raised pursuant to either of these code sections, SMCOE's motion to dismiss as to Student's issue 14 is therefore granted in its entirety as to both SMCOE and to the District.

ORDER

1. SMCOE's motion to dismiss is denied as to issue 12 of Student's complaint.
2. SMCOE's motion to dismiss is granted as to issues 13 and 14 of Student's complaint in their entirety.
3. This case shall continue as to Student's issues one through 12.
4. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: July 15, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings