

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, STATE BOARD OF
EDUCATION, CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2013080299

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION’S
MOTION TO DISMISS

On August 8, 2013, Student filed a Request for Due Process Hearing (complaint), naming the Los Angeles Unified School District (District), the State Board of Education and the California Department of Education (CDE). On August 19, 2013, CDE filed a Motion to Dismiss, arguing that CDE is not a proper party in this action because it is not responsible for providing a free and appropriate public education (FAPE) to the Student. Student did not file an opposition or response. For the reasons discussed below, CDE’s motion to dismiss CDE is granted.

APPLICABLE LAW

The Office of Administrative Hearings (OAH) has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 under California law 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, 56028.5.) The term “public agency” includes state educational agencies (SEA), local educational agencies (LEA’s), “and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (34 C.F.R. § 300.33 (2006).)

California law places the primary responsibility for providing special education to eligible children on the local education agency LEA. (Ed. Code, §§ 56300, 56340,

56344(c).) 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. (Ed. Code, §56502, subd. (d)(2)(B).)

CDE is a SEA responsible for “general supervision” of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1412(a)(11)(A).) CDE generally is not a party in a due process proceeding. As an exception to this general rule, CDE may be responsible for providing special education, by default, if, under the applicable circumstances, it is otherwise impossible to identify a responsible LEA or because the Student would be unable to obtain relief from the LEA if Student prevails. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063 (holding CDE responsible for providing special education services to a parentless child where the Orange County Juvenile Court had not appointed a legal guardian or responsible adult, and then-existing California law under the facts presented did not allow identification of a “parent” for purposes of determining residency and a responsible LEA).)

DISCUSSION

Here, Student alleges that Student attends a District school, and that District’s school personnel failed to provide support services related to the Student’s health needs and failed to timely meet with the parents for purposes of amending Student’s Individualized Education Program (IEP).

Student does not allege that CDE provided any educational services to Student, made any education decisions related specifically to Student, or was involved with Student’s education as a LEA. He does not allege that a responsible LEA does not exist or that Student would be unable to obtain relief from District if he prevails. Student’s complaint makes only one reference to CDE. Student alleges that, as a result of District’s conduct, Student’s parents are “now conditioned to go directly to the district and even to the state with issues that should be managed at the school level” and that “this is costing the state because the state now has to deal with proceedings.”

Student appears to have named the CDE as a party because of its general oversight authority under California special education law. However, under the IDEA, CDE’s oversight authority is not a sufficient basis, by itself, for naming CDE as a party to Student’s due process complaint. Student’s complaint does not allege any facts to support a claim against CDE. The Motion will be granted.

ORDER

1. CDE’s motion to be dismissed as a party is granted.

2. Student's complaint shall proceed to hearing against District and State Board of Education.

3. All dates in this matter are confirmed.

Dated: August 27, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings