

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROWLAND UNIFIED SCHOOL
DISTRICT AND CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH Case No. 2015010633

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS IT AS A
PARTY

On January 13, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a due process hearing request naming the Rowland Unified School District and the California Department of Education as respondents.

On January 15, 2015, CDE filed a motion to dismiss on the grounds that it is not a proper or necessary party to the action.

On January 21, 2015, Rowland filed an opposition to the motion. On January 18, 2015, Student filed a non-opposition to CDE's motion. On January 22, 2015, CDE filed a reply to Rowland's opposition.

APPLICABLE LAW

Special education due process hearing procedures extends 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.) The Code of Federal Regulations provides that the term "public agency" encompasses state educational agencies (SEAs) such as CDE, as well as local educational agencies (LEAs) such as District, "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)).¹ If CDE is a "public agency" as defined in

¹ All references are to the 2006 Code of Federal Regulations.

the IDEA, to be a proper party for a due process hearing CDE must also be involved in making decisions regarding Student.

Determination of whether CDE is a “public agency involved in any decisions regarding” Student requires a review of California statutes that define the role of CDE with regard to assessment of students. CDE operates special Diagnostic Centers to provide services, including pupil assessment, consultation, technical assistance, and training to school districts, county offices of education, and special education local plan areas. (Ed. Code, §§ 59201.) Students who have already been assessed may be referred to the state Diagnostic Centers for further assessment and recommendations, “as appropriate,” indicating that inappropriate referrals should not be made, and need not be accepted. (See Ed. Code, § 56326.) The referral must be made by the student’s LEA, state the reasons for the referral, and include the results of local assessments. (Cal. Code Regs., tit 5, § 3025, subd. (a).) Such a referral for further assessment by the Diagnostic Centers does not constitute placement of the student in one of the special schools operated by CDE to educate deaf and blind students, who, because of their severe loss of hearing or vision, cannot be provided an appropriate educational program and related services in the regular public schools (Ed. Code, §§ 59001 & 59101), demonstrating that CDE is not an LEA for purposes of providing a free appropriate public education until a student is actually attending one of those schools. (Ed. Code, § 56367, subd. (b).) (See, *Student v. Lodi Unified School District and CDE* (2014) Cal.Ofc.Admin.Hrngs. Case No. 2014100012 (*Lodi*).)

DISCUSSION

Student’s complaint alleges that he was referred by Rowland to CDE’s Diagnostic Center-South, and that Student did not agree with the assessment results and requests an Independent Education Evaluation be conducted. Student contends that Rowland has refused his request and stated that CDE is the responsible agency to fund an IEE. Although Student believes that Rowland is the public agency responsible for funding an IEE or to file for a due process hearing to defend the appropriateness of the assessment, he brings this action to determine which respondent is responsible.

CDE contends that it is not a proper party to this action, as it is not an educational agency with a duty to provide Student with a FAPE. CDE argues that assessments are not “services” provided to a student within the meaning of the IDEA, and that completing an assessment at the request of District does not constitute involvement in decisions regarding Student.

Rowland asserts that CDE is a necessary party because CDE rendered related services to Student when it decided to conduct the assessment which makes it a public agency under Education Code, sections 56500 and 56028.5. Rowland also contends that the assessment was “obtained” by CDE by conducting the assessment. This latter argument is without merit as CDE would stand in the same position as any other entity that contract with a school district to conduct an assessment.

As set forth above, Education Code sections 59201 and 56367, subdivision (d), do not impose a duty upon CDE to be individually responsible to provide a FAPE, or make education decisions about Student. Student's argument that the allegations of the complaint that CDE performed an assessment of Student upon referral from District demonstrate that CDE participated in District's educational decisions constitutes an unsupported and unreasonable extension of CDE's statutory role in supervising the state Diagnostic Centers.

In *Lodi*, the issue was whether CDE became a public agency by its conducting an assessment of a student upon referral from a school district. OAH concluded:

In sum, because under the facts alleged CDE was not a public agency involved in any decisions regarding Student, CDE is not a proper respondent. Therefore CDE is dismissed as a party to the complaint.

In its motion, Student admits that "CDE may not meet the precise, technical difficulties of the (sic) in state law provisions regarding to whom "the due process hearing procedures extend." Student fails to state why *Lodi* would not apply here as it is on point. Student cites a number of authorities which are not applicable to this situation. Here, CDE is not a proper party as it was not a public agency responsible for providing a free appropriate public agency to Student.

ORDER

1. CDE's motion to dismiss is GRANTED. CDE shall be dismissed as a party.
2. The matter will proceed as scheduled as Rowland.

IT IS SO ORDERED.

DATE: January 23, 2015

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings