

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL
DISTRICT, LA TIERRA ACADEMY OF
EXCELLENCE CHARTER SCHOOL AND
CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH Case No. 2016060020

ORDER DENYING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On May 20, 2016, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings naming Inglewood Unified School District, La Tierra Academy of Excellence Charter School and California Department of Education, as respondents. The complaint alleged that at all relevant times, Student resided within District, attended La Tierra, a school chartered by District, was denied a free appropriate public education by District and La Tierra.

Student named CDE as a party based on the State's enactment in 2012 of Senate Bill Number 533 (2011-2012 Reg. Sess.). This legislation provided for an emergency loan to District to avoid its insolvency, and pursuant to it, under subdivision (b) of Section 41326 of the Education Code, the Superintendent of Public Instruction (State Superintendent) assumed "all legal rights, duties, and powers of the governing board" of District, and appointed a state administrator to "act on [the State Superintendent's] behalf...under the direction and supervision of the Superintendent" to assume control of District and take actions to return District to fiscal solvency.

On May 24, 2016, CDE filed a Motion to Dismiss CDE from this matter on the grounds that the complaint fails to state a claim against CDE that is subject to OAH jurisdiction, because the complaint does not allege that CDE was involved in any decisions regarding Student, nor does it set forth facts under which CDE could be responsible for providing Student a free appropriate public education. Student filed an opposition to CDE's motion on May 26, 2016, and CDE filed a reply in support of its motion on May 26, 2016.

APPLICABLE LAW AND DISCUSSION

The Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) and its state law counterparts do not set for a procedure for dismissing IDEA-related claims on the merits without first affording the petitioning party a chance to develop a record at hearing. The Administrative Procedures Act (Gov. Code, § 11340 et seq.) require that parties appearing before OAH receive notice and an opportunity to be heard, including the opportunity to present and rebut evidence. (Gov. Code, § 11425.10, subd. (a)(1).) However, at a prehearing conference, an administrative law judge may address such matters, “as shall promote the orderly and prompt conduct of the hearing.” (Gov. Code, § 11511.5, subd. (b)(12), and at hearing an ALJ may take action “to promote due process or the orderly conduct of the hearing.” (Cal. Code Regs., tit. 1 § 1030, subd. (e)(3).) Also, as an administrative tribunal, OAH has jurisdiction to determine the extent of its own jurisdiction and power to act. (See *People v. Williams* (2005) 35. Cal. 4th 817, 824.)

Accordingly, OAH may dismiss a matter in its entirety, or one or more claims, where it is evident from the face of the complaint that the alleged issues fall outside OAH jurisdiction or the pleaded facts cannot sustain a claim. Such circumstances may include, among other things, complaints that assert civil rights claims or claims seeking enforcement of a settlement agreement, or that assert claims against an entity that cannot be legally responsible for providing special education and related services under the facts alleged.

Both Student and CDE cite *Student v. Inglewood* (April 16, 2014) Cal.Offc.Admin.Hrngs. (Motion to Dismiss) 2014030123.) While CDE correctly argues the OAH case is not binding, it is nonetheless on point and well-reasoned.¹

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, 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.)

¹ Prior administrative decisions have persuasive value in later cases, although they are not binding precedent. (Cal. Code Regs., tit. 5, § 3085.)

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” may be “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 exception needs.” (Ed. Code, §§ 56500 and 56028.5.) Similarly, the Code of Federal Regulations provides that the term “public agency” encompasses state educational agencies (SEAs) such as CDE, as well as local 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 (2012).)

Under the IDEA, a SEA, such as CDE is responsible for “general supervision” of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1400(d)(11)(a).) However, CDE generally is not a party in a due process proceeding because a LEA (school or county office of education) is in most instances the public agency that is responsible for providing special education services, and “involved in any decisions regarding the pupil.) (Ed Code, § 56501, subd. (a).) Under normal circumstances not involving a LEA operating under an appointed state administrator, three exceptions exist to the general rule: First, CDE is the responsible public agency in due process hearings involving students attending state schools for the deaf and for the blind that are operated by CDE. (Ed. Code., §§ 59002; 59102). Second, CDE may be responsible for providing special education by default, if conduct of the legislature or CDE has made is impossible to identify a responsible LEA. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063.) Third, CDE may be responsible for providing special education services where the LEA is unable or unwilling to provide those services. (*Los Angeles Unified School District v. Garcia* (9th Cir. 2012) 956 F.3d 956, 960, citing 20 U.S.C. § 1413(g).

Student’s opposition to CDE’s motion is based upon CDE’s appointment of the state administrator and the administrator’s assumption of the “legal rights, duties and powers of District’s board. Student asserts that CDE is a necessary or indispensable party, without whom complete relief cannot be obtained. (Civ. Code, § 389, subd. (a)(1)). CDE is the entity with power to make decisions on behalf of District.

Senate Bill 533 and Education Code section 41326 contain no language that expressly made CDE responsible for District’s provision of special education services to students while under control of the state administrator. However, the administrator’s assumption of the legal rights, duties and powers of District’s governing board raises the question of whether the appointment incidentally creates a fourth exemption to the general rule and makes CDE responsible for District’s provision of a free appropriate public education to District students.

There is no question that District was, or absent the appointment of a state administrator, would have been the LEA responsible for providing Student a free appropriate public education. Further nothing in Senate Bill 533 or Education Code section 41326 abolished or suspended District as a legal entity or prohibited its ongoing operation.

CDE, acting through its state administrator assumed control of District to ensure District's return to fiscal solvency. (Ed. Code, § 41325, subd. (a).)

The governing board of a school district generally may exercise any power of the district, must discharge any legal duty of the district, and is ultimately responsible for the performance of any power or duty that it delegates to district officers or employees. (Ed. Code, § 35361.) Among its specific powers and duties, a governing board has authority over a school district's special education programs. (Ed. Code, § 56195.5, subd.. (a).) Also the governing board may sue and be sued in the name by which the school district is designated (Ed. Code, § 35162.) A suit naming a school district is, under Education Code section 35162, effectively a suit against the school districts governing board.

Pursuant to Senate Bill 533 and Education Code, section 41326, subdivision (b), the State Superintendent, acting through his/her agent, the state administrator, assumed all of the above powers and duties of District's governing board. This included the power to exercise authority over District's special education programs, and to sue and be sued in District's name. During the time period that the State Superintendent exercises his authority, District's governing board has no rights, duties, or powers. (Ed. Code, § 46321, subd. (c)(1).)

Therefore, CDE's motion to dismiss is denied. The facts alleged in Student's complaint are sufficient to establish that Senate Bill 533 and Education Code, section 41326 put CDE's administrative agent, hence, CDE, in the shoes of District's board. As such, CDE is ultimately responsible for the actions of District's officers and employees, and is a proper party to this due process hearing to determine whether District failed to provide Student a free appropriate public education.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

DATE: June 8, 2016

DocuSigned by:

Judith Pasewark

JUDITH PASEWARK

Administrative Law Judge

Office of Administrative Hearings