

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

MT. DIABLO UNIFIED SCHOOL
DISTRICT, TWIN RIVERS UNIFIED
SCHOOL DISTRICT, SACRAMENTO CITY
UNIFIED SCHOOL DISTRICT,
SACRAMENTO COUNTY MENTAL
HEALTH, SACRAMENTO COUNTY
PROBATION DEPARTMENT,
SACRAMENTO COUNTY OFFICE OF
EDUCATION, CALIFORNIA
DEPARTMENT OF MENTAL HEALTH,
AND CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2009050043

ORDER GRANTING MOTION TO
DISMISS

On April 28, 2009, attorney Christian Knox filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student naming the above parties, include the Sacramento City Unified School District (SCUSD).

On May 19, 2009, OAH issued its order determining that Student's fourth claim in her complaint to be insufficient, and granting Student 14 days to file an amended complaint. The other claims in Student's complaint were determined to be sufficient.

On May 21, 2009, attorney Karen Samman filed on behalf of SCUSD a motion to dismiss SCUSD as a party. OAH has received no response from Student.

APPLICABLE LAW

Parents have 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).) 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 [hereafter *Wyner*].)

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

SCUSD contends that Student’s complaint raised only one claim against SCUSD (claim no. 4), and that claim was deemed insufficient by OAH order on May 19, 2009. SCUSD contends that no other claims in Student’s complaint pertain to SCUSD and, therefore, SCUSD should be dismissed as a party.

Student has not filed a response to SCUSD’s motion. However, Student indicated by letter to OAH, and served to all parties, that she will proceed with the complaint as modified by the Determination of Sufficiency. . . .”

Regardless of whether Student responded to SCUSD’s motion, dismissal is appropriate at this time. Student retains the right to file an amended complaint, as SCUSD acknowledges in its pleading, naming SCUSD. However, at this time there is no claim pending against SCUSD.

ORDER

1. Sacramento City Unified School District (SCUSD) is dismissed as a party in the above-titled matter.
2. The matter will proceed as scheduled against the other named parties.

It is so ordered.

Dated: May 27, 2009

/s/

DEBRA HUSTON
Administrative Law Judge
Office of Administrative Hearings