

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

REDONDO BEACH UNIFIED SCHOOL
DISTRICT AND SOUTHWEST SELPA.

OAH CASE NO. 2009080516

ORDER GRANTING MOTION TO
DISMISS

On September 2, 2009, Tania L. Whiteleather, attorney for Student, filed an Amended Due Process Hearing Request¹ (amended complaint) against Redondo Beach Unified School District (RBUSD) and Southwest Special Education Local Plan Area (SELPA).

On September 9, 2009, Nancy Finch-Heuerman, attorney for RBUSD, filed a Motion to Dismiss, alleging that Student had failed to state a claim over which OAH had jurisdiction, and that RBUSD was not a proper party to this action. OAH received no response from Student to RBUSD's motion.

On September 11, 2009, Karen E. Gilyard, attorney for SELPA, filed a Motion to Dismiss, alleging that SELPA was not a proper party to this action. On September 14, 2009, Student filed an opposition to SELPA's motion. On September 15, 2009, SELPA filed a reply to Student's opposition.

APPLICABLE LAW

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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

a free appropriate public education (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.)

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

Student is eligible for special education and completed 2008-2009 school year (SY), eighth grade, within the Hermosa Beach City Elementary School District (HBCESD). Student contends that HBCESD does not offer high school and matriculating students are eligible to choose between two neighboring districts for high school. The two districts are RBUSD and Manhattan Beach Unified School District (MBUSD). Pursuant to an agreement between the three school districts, any matriculating student from HBCESD, regardless of whether they are eligible for special education, has the sole discretion to choose which high school district the student wishes to attend. The choice has to be made between February 1 and June 1 of the student’s eighth grade year. The parties do not dispute these facts.

In her amended complaint, Student contends that HBCESD failed to provide her parents with the requisite notice of their rights and the procedures concerning the high school enrollment choice. Student contends that her parents chose RBUSD, however, because they were not informed of the cut off date, their choice was not made until after June 1, 2009, and Student was therefore unilaterally enrolled in MBUSD. Student states that HBCESD and MBUSD developed an Individualized Education Program (IEP) for SY 2009-2010, to which her parents have not consented.

Neither HBCESD nor MBUSD are named parties to this action. Student does not allege that she disagrees with any aspect of the IEP for SY 2009-2010. Student’s sole contention is that because HBCESD failed to provide proper notice regarding the enrollment time period, she is now entitled to attend high school at RBUSD.

In its motion to dismiss, RBUSD contends that Student fails to state a special education claim upon which relief can be granted. RBUSD asserts that the right to choose a high school is extended to all HBCESD students, regardless of their special education or general education status. As such, it is not a special education matter over which OAH has jurisdiction.

RBUSD further contends that Student cannot state a claim against it, as Student is not currently, and has never been, enrolled in RBUSD. RBUSD has no involvement in the high school selection process for students from HBCESD. HBCESD is responsible for providing families of its students with the necessary information regarding their right to choose a high school district. RBUSD only becomes involved once a parent makes their choice, at which point RBUSD participates in the IEP development process. Because Student failed to file an opposition, RBUSD's facts are accepted as uncontested, especially since they do not contradict the facts and allegations in Student's amended complaint.

In its motion to dismiss, SELPA asserts that Student failed to state a claim against it, and as such SELPA should be dismissed. SELPA's contention is that it does not provide any special education services and as such, is not a proper party to this action. In support SELPA offers a sworn declaration of Mary Ring, Director of Eligibility and Assessments, which sets out that the SELPA is an administrative body only.

Student opposes SELPA's motion on the grounds that the SELPA is a public education agency. Student asserts, through declaration of Christine Little, that SELPA has a responsibility to identify a continuum of options, and oversee compliance with special education laws by its member school districts.

Failure to State a Claim

As discussed above, the purpose of the IDEA is to ensure that all children with disabilities have the right to a FAPE. To ensure that right, the IDEA allows for an administrative due process hearing when there is a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child, or an issue concerning the provision of a FAPE to a child, or there is an issue regarding the availability of a program that is appropriate for the child. For purposes of student initiated claims, these are the only grounds over which OAH has jurisdiction.

Student's entire claim is summed up in her own statement from the amended complaint, "[L]ike her non-disabled peers, [Student] enjoyed a right to select from two districts for her high school." Student does not allege that her right to attend RBUSD is connected in any way to a failure to identify or assess her needs. Student does not allege there is a failure to offer or provide a FAPE based upon current inability to attend high school in RBUSD. Student has not alleged that there is an issue regarding the availability of a program that is appropriate for her. In sum, Student's entire claim is that she had a right to choose, as did all students, and that due to alleged actions of HBCESD her parents failed to make a timely choice. Student has failed to state a claim that falls within the above identified parameters. OAH lacks jurisdiction over Student's claim.

Necessary Parties

Both RBUSD and SELPA put forth various grounds as to why they are not a necessary party to this action. Based upon the finding that OAH lacks jurisdiction over Student's claim, OAH need not determine whether RBUSD or SELPA are necessary parties to this action. Since this was the sole ground for SELPA's motion to dismiss, in light of the above finding, SELPA's motion is moot.

ORDER

GOOD CAUSE APPEARING, RBUSD's Motion to Dismiss for failure to state a claim over which OAH has jurisdiction is granted, and the matter is dismissed in its entirety.

Dated: September 21, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings