

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND CALIFORNIA
DEPARTMENT OF EDUCATION

OAH CASE NO. 2009120920

ORDER GRANTING MOTION TO
DISMISS CALIFORNIA
DEPARTMENT OF EDUCATION

On December 21, 2009, Student filed a Request for Due Process Hearing (complaint), naming District and the California Department of Education (CDE) as the respondents.

On January 19, 2010 CDE filed a Motion to Dismiss CDE as a party on the grounds that the complaint fails to allege any claims against CDE. CDE asserts that even if such claims were raised in the complaint it is not a “public agency” within the meaning of Education Code sections 56500 and 56501, subdivision (a), except in those cases where CDE provides special education and related services to as student in a State school for the deaf or blind. In this case CDE did not directly provide special education and related services to Student. CDE asserts because it has no obligation to provide special education services to Student it is not a necessary or proper party to the complaint and must be dismissed.

OAH received no response to the Motion to Dismiss from Student.

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.)

DISCUSSION

Student’s complaint alleges she is failing in her academic subjects and that District has failed to provide Student sufficient accommodations to succeed in academics. The complaint raises no claims against CDE and seeks no remedies from CDE. Further the complaint makes no claims that CDE is a public agency involved in the provision of special

education services or decisions regarding Student. Accordingly, CDE is not a necessary or proper party to the complaint, and the motion to dismiss is granted.

ORDER

GOOD CAUSE APPEARING, CDE's Motion to Dismiss is granted. CDE is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining respondent.

IT IS SO ORDERED

Dated: January 27, 2010

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings