

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HEARTSPRING.

OAH CASE NO. 2010100936

ORDER GRANTING MOTION TO
DISMISS COMPLAINT

On October 20, 2010, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming Heartspring, “a California Department of Education Non Public School.”

On November 1, 2010, Heartspring, Inc. filed a Motion to Dismiss, alleging that the Office of Administrative Hearings (OAH) does not have jurisdiction in this case. Heartspring served the motion on Student’s attorney, and on the attorneys of record for both the San Miguel Joint Union School District (District), in OAH Case No. 2010090006, and the San Luis Obispo County Special Education Local Planning Agency (SELPA), in OAH Case No. 2010100993. Student filed the above cases against the District and the SELPA on August 30, and October 21, 2010, respectively. All three cases involve the same general factual circumstances.

OAH has received no response to Heartspring’s Motion to Dismiss from Student, the District, or the SELPA.¹

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the pupil 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 purpose of the Individuals with Disabilities Education Improvement Act (IDEA 2004) (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

¹ On November 1, 2010, Student filed a motion to consolidate all three cases for purposes of hearing. That motion is ruled by separate order.

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.) The primary responsibility for providing a FAPE to a pupil with a disability rests on a local education agency (LEA). (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.)

DISCUSSION

Student contends in his complaint that the District placed Student at Heartspring, a nonpublic school (NPS) in Kansas, and began funding that placement in August 2008. Student asserts that Heartspring is certified by California as an NPS, and, as such, OAH has jurisdiction over it regarding his dispute about his educational services.

Heartspring contends that it is not a proper party to this proceeding because, although it is an NPS, Heartspring is not a public agency responsible to fund or make decisions about Student’s special education placement. Rather, Heartspring contends that the District is Student’s LEA for purposes of a FAPE. Heartspring represents that Student was placed in its out-of-state facility pursuant to an individualized education program (IEP) from the District, and an OAH Decision and Order in OAH Case No. 2008010224. Student has not presented any evidence that Heartspring is a public education agency or LEA responsible to provide him with a FAPE. Accordingly, Heartspring’s motion to dismiss the instant case against it is granted.

ORDER

Heartspring’s Motion to Dismiss this case is granted. The matter is dismissed.

Dated: November 4, 2010

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings