

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, VALLEY CHARTER
SCHOOL AND CALIFORNIA
DEPARTMENT OF EDUCATION.

OAH CASE NO. 2010110533

ORDER GRANTING MOTION TO
DISMISS CALIFORNIA
DEPARTMENT OF EDUCATION

On December 14, 2010, the attorney on behalf of the California Department of Education (CDE) filed a motion to dismiss CDE as a party to this complaint (motion), alleging that it is not an educational agency responsible for providing special education and related services to Student, nor is it mentioned anywhere in the factual contentions of the complaint. No opposition to this motion has been filed by any of the remaining parties.

APPLICABLE LAW

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.)

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 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 the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

In this matter, Student names CDE as a party to his complaint. It appears that this is due to CDE's supervisorial oversight of special education programs as the Statewide Educational Agency (SEA) under the Individuals with Disabilities Education Act (IDEA), as the SEA has the responsibility for the general supervision and implementation of IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) The complaint, however, raises no claims against CDE which indicate that it was involved in Student's IEP process or that it specifically has denied Student a FAPE. In fact, the complaint provides no factual allegations whatsoever against CDE, and requests no relief from CDE either.

Additionally, the IDEA defines and limits the hearing officer's jurisdiction in due process proceedings. The issue of CDE's oversight of local education agencies to ensure their compliance with relevant special education law and regulations is outside the scope of OAH's jurisdiction.

Accordingly, CDE is not a necessary or proper party to the complaint.

ORDER

CDE's motion to dismiss itself as a party is granted. The matter will proceed against the other remaining parties as presently scheduled.

IT IS SO ORDERED.

Dated: December 21, 2010

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings