

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF  
EDUCATION.

OAH CASE NO. 2012010158

ORDER GRANTING CALIFORNIA  
DEPARTMENT OF EDUCATION'S  
MOTION TO DISMISS

On January 9, 2012, Student, through his parent, filed a Due Process Hearing Request (complaint) naming only the California Department of Education (CDE). On February 2, 2012, CDE filed a motion to dismiss the complaint, alleging that it is not a responsible educational agency. Student has not filed an opposition or other response to CDE's motion.

BACKGROUND

In his lengthy complaint, Student basically alleges that CDE has failed to provide him with a free appropriate public education (FAPE) for the last three school years because it has failed to provide him with the placement, related services, including behavior services, accommodations, and modifications specified in Student's various individualized education programs (IEP's). It is Student's contention that CDE is ultimately responsible for directly addressing and providing for Student's unique needs as a pupil eligible for special education and services. As more fully discussed below, Student's belief is misplaced. Student's school district and not CDE is responsible for developing and implementing Student's IEP, and in ensuring that he receives a FAPE. CDE's motion to dismiss is therefore granted.

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.)

A local educational agency (LEA) is generally responsible for providing a FAPE to students with disabilities residing within its jurisdictional boundaries. (Ed. Code, § 48200.) The responsibility to identify children with disabilities, to assess in all areas of suspected disability, to determine appropriate educational placements and related services through the IEP process, and to provide needed special education and related services is placed on an LEA. (Ed. Code, §§ 48200; 56300; 56302; 56340; 56344, subd. (c).) An LEA is “a school district, a county office of education, a charter school participating as a member of a special education local plan area, or a special education local plan area.” (Ed. Code, § 56026.3.) CDE is a state educational agency (SEA), not an LEA, because it is “primarily responsible for the State supervision of public elementary schools and secondary schools ... .” (20 U.S.C. § 1401(32).)

CDE is a proper party to a due process proceeding when it provides direct special education services, as it does in the state's specialized schools for the deaf or blind. (See, e.g., *Student v. Montebello Unified School Dist., et al.* (2009) Cal.Offc.Admin.Hrngs. Case No. 2008090354 (Order Granting Motion to Dismiss); *Student v. Fremont Unified School Dist., et al.* (2002) SEHO Case No. SN02-02368; *Minarets Joint Union High School Dist. v. Student, et al.* (1997) SEHO Case No. SN1220-97/SN1301-97.) CDE may also be responsible for providing an individual student a FAPE when California law fails to designate any responsible entity, an issue which is not applicable to Student’s case. (*Orange County Dep’t of Educ. v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1170.)

In its capacity as the SEA responsible for the administration of special education law in California, CDE is not “involved in any decisions regarding a pupil” within the meaning of section 56501, subdivision (a). There is no supervisory liability in an SEA for every failure of an LEA to comply with IDEA or state law. (*Beard v. Teska* (10th Cir. 1994) 31 F.3d 942, 953-954; *Carnwath v. Grasmick* (D.Md. 2000) 115 F.Supp.2d 577, 582 [“Plaintiffs must show ... that the SEA was directly involved and responsible for the denial of FAPE”].)

A public agency under the IDEA is one that is “responsible for providing education to children with disabilities.” (34 C.F.R. § 300.33 (2006).) Under California law, a public agency subject to being named as a respondent in a due process claim must be “providing

special education or related services to individuals with exceptional needs" and must be involved in decisions regarding the pupil (Ed. Code, §§ 56028.5, 56500; 56501, subd. (a).)

### DISCUSSION

In the complaint, Student basically alleges that CDE is an appropriate party because of its supervisory oversight of special education programs as the SEA under the 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 contends that CDE is an appropriate party because Student's parent "believes" that CDE is responsible for providing and implementing all facets of Student's IEP.

However, Student's complaint gives no indication that CDE has been involved in Student's education either as a party to the development of his IEP, in decisions regarding Student, or as a provider of an educational placement or of services to him. The issue of whether CDE appropriately supervised Student's school district to ensure that it was in compliance with relevant special education laws and regulations is outside the scope of OAH's jurisdiction in a due process hearing. Accordingly, CDE is not a proper party to the complaint, and its motion to dismiss is granted.

### ORDER

CDE's motion to dismiss itself as a party is granted. Since it is the only party named in Student's complaint, all pending dates scheduled in this case are hereby vacated.

Dated: February 13, 2012

/s/

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DARRELL LEPKOWSKY  
Administrative Law Judge  
Office of Administrative Hearings