

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRUITVALE SCHOOL DISTRICT AND
KERN COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH CASE NO. 2012030900

ORDER GRANTING MOTION TO
DISMISS KERN COUNTY
SUPERINTENDENT OF SCHOOLS AS
A PARTY

On March 22, 2012, Parent, on behalf of Student, filed a Request for Due Process Hearing (complaint), naming Fruitvale School District (District), Kern County Superintendent of Schools (Superintendent) and Kern County Consortium Special Education Local Plan Area (SELPA) as Respondents.

On March 29, 2012, Respondents filed a Motion to Dismiss Due to Lack of Jurisdiction, alleging that Student's complaint contains allegations that deal only with issues outside Education Code section 56501(a) and the Office of Administrative Hearings (OAH) does not have jurisdiction over these issues. On April 13, 2012, OAH dismissed four of the five issues in Student's complaint.

The sole remaining issue in the complaint alleges that Student was denied SELPA services (speech and language services) and he continues to have needs in the areas of speech, socialization and behavior. Student's proposed resolution is that OAH order the SELPA to provide services as soon as possible.

On April 19, 2012, Respondent SELPA filed motion to dismiss it on the grounds that it does not provide any special education services to Student nor is it involved in any decision relating to Student, and does not deliver a free and appropriate public education (FAPE) for students in Kern County. On April 24, 2012, OAH dismissed SELPA as a party in the above-entitled matter and ordered the matter to proceed against the remaining parties, District and Superintendent.

On April 19, 2012, Respondent Superintendent filed a motion to dismiss on the grounds that the sole remaining issue in the complaint does not contain any facts alleged against Superintendent. OAH received no response from Student to the Motion to Dismiss.

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

DISCUSSION

In the present matter, the sole remaining issue in Student’s claim alleges that SELPA or Quailwood School (a school within District) improperly denied Student speech and language services. The other issues in the claim that were previously dismissed by OAH contained allegations against Superintendent. However, there are no allegations relating to Superintendent in the sole remaining issue. Therefore, since the complaint no longer contains any allegations against Superintendent, it is appropriate to dismiss Superintendent as a party.

ORDER

Respondent's Motion to Dismiss as to Superintendent is granted. Superintendent is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining party, District.

IT IS SO ORDERED.

Dated: April 24, 2012

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings