

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

EDUCATIONAL REPRESENTATIVE ON
BEHALF OF STUDENT,

v.

CALIFORNIA DEPARTMENT OF
EDUCATION,

OAH CASE NO. 2012041056

EDUCATIONAL REPRESENTATIVE ON
BEHALF OF STUDENT,

v.

WOODLAND JOINT UNIFIED SCHOOL
DISTRICT AND COUNTY OF
SACRAMENTO, CHILD PROTECTIVE
SERVICES.

OAH CASE NO. 2012080378

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On April 25, 2012, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings in OAH case number 2012041056, naming the California Department of Education (CDE) along with several other school districts who have been dismissed from this case.¹ On May 22, 2012 CDE filed a motion requesting its dismissal from the complaint, which OAH denied on May 29, 2012, finding that there was a triable issue for hearing. On August 6, 2012, CDE filed a motion for reconsideration of the ALJ's May 29, 2012 Order, and a renewed request to dismiss CDE from the complaint, which OAH denied on August 23, 2012.

CDE, in its August 23, 2012 Prehearing Conference (PHC) statement, and at the August 27, 2012 PHC, again requested that OAH dismiss CDE for lack of jurisdiction to hear Student's claims against CDE. Student opposed CDE's request at the PHC. The

¹ On August 31, 2012, OAH granted Student's motion to consolidate this matter with OAH case number 2012080378.

August 28, 2012 PHC order requested that the parties file briefs addressing two jurisdictional issues:

1) Does OAH or another agency, such as the United States Department of Education, have jurisdiction to determine Student's claim that CDE may be held responsible as the responsible public agency if CDE takes action that makes it impossible for local education agencies (LEA's) to provide a free appropriate public education (FAPE) to a student, or fails to assure compliance with the Individuals with Disability Education Improvement Act (IDEA)? (*Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063; *Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 953.)

2) If OAH does have jurisdiction to hear Student's claim, did CDE make it impossible for LEA's to provide a FAPE to foster child students who, due to multiple foster care placements, move between multiple school districts, or fail to assure compliance with the IDEA regarding these foster child students?

On September 4, 2012, Student filed his brief, and CDE filed its brief on September 12, 2012.

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.)

Title 34, Code of Federal Regulations, parts 300.33 states that a "[p]ublic agency includes the SEA [state educational agency], LEAs [local educational agencies], ESAs [educational service agencies], nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities."

In California, the determination of which agency is responsible to provide education to a particular student, is, in most instances, governed by residency requirements as set forth in sections 48200 and 48204 of the Education Code. The IDEA requires states to develop programs for ensuring that the mandates of the IDEA are met, and that children eligible for special education receive a FAPE. (20 U.S.C. § 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the LEA, usually the school district in which the parents of the child reside. (Ed. Code, §§ 56300, 56340 [describing LEA responsibilities].) The law also contemplates that, when a parent disputes

the educational services provided to the special needs child, the proper respondent to the due process hearing request is the LEA. (Ed. Code, 56502, subd. (d)(2)(B) [LEA's response to due process complaint].) Only in unusual circumstances does California law deviate from that statutory scheme to require a different entity to provide those services.

The purpose of the 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 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 complaint, Student 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 the IDEA. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) Specifically, Student alleges that CDE has denied Student a FAPE because existing California statutes and regulations fail to ensure that foster children, like Student, remain the responsibility of one LEA even if the foster child moves between LEA's due to multiple foster care placements. However, Student's complaint raises no claims against CDE that it was involved in Student's individualized education program process or that it specifically has denied Student a FAPE. The complaint makes no claims that CDE is a public agency involved in the provision of special education services or decisions regarding Student. Although there have been situations where CDE has been found to be an appropriate party to a due process complaint, those cases are not applicable here. For example, in *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, the issue was which educational agency was responsible for providing special education services to a parentless child when the Orange County Juvenile Court had not appointed a legal guardian or responsible adult. The court of appeals found that the district court properly determined that CDE had responsibility from July 28, 2006 to October 9, 2007, by default under the IDEA for providing a FAPE to the parentless child in absence of any California law during that time which designated local entity to be responsible for that education. (*Id.*, at p. 1163.) However, in this case, Student does not allege that CDE was responsible for Student's education because there was no responsible LEA.

Instead, Student alleges that California law systematically denies foster children, like Student, a FAPE because they often switch LEA's due to multiple foster care placements and therefore lack any continuity in their education, which prevents them from making meaningful educational progress. Additionally, California law fails to ensure that either the juvenile court or LEA's appoint an educational surrogate for foster children, like Student, whose parents have had their parental rights terminated. However, both these contentions are systematic challenges to California statutes and regulations, over which OAH cannot issue an order to mandate that CDE ensure that foster children who require special education services receive a FAPE. (*Student v. Los Angeles Unified School District and California Department of Education* (November 22, 2011) Cal.Ofc.Admin.Hrngs. Case No. 2011110065, p. 6.) Additionally, "[involved in any decisions regarding a pupil], therefore, does not include system-wide decisions about the provision of special education generally, or agency-wide compliance with law, or the structure of special education programs in particular institutions." (*Student v. Los Angeles County Sheriff's Department, et al.* (February 9, 2009) Cal.Ofc.Admin.Hrngs. Case No. 2009010071, pp. 7 and 10; Order dismissed CDE as a party because CDE did not provide student with special education services or involved in any decisions regarding him.)

While Student may be correct that California's existing statutory and regulatory framework denies him a FAPE, his requested relief is outside the scope of OAH's jurisdiction, and more appropriately handled through a complaint with the United States Department of Education, or an order from a court of competent jurisdiction. Therefore, CDE is dismissed as a party.

ORDER

1. CDE's Motion to Dismiss as a party is granted. CDE is dismissed as a party in OAH case number 2012041056, and that matter is dismissed.
2. The matter will proceed as scheduled against the remaining parties in OAH case number 2012080378.

Dated: September 17, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings