

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT, SAN JUAN UNIFIED SCHOOL DISTRICT, EL DORADO UNION HIGH SCHOOL DISTRICT AND CALIFORNIA DEPARTMENT OF EDUCATION.

OAH CASE NO. 2012041056

ORDER DENYING CALIFORNIA DEPARTMENT OF EDUCATION'S MOTION TO DISMISS

On April 25, 2012, Student filed a Request for Due Process Hearing (complaint) naming the California Department of Education (CDE) along with Folsom Cordova Unified School District, San Juan Unified School District, and El Dorado Union High School District. On May 22, 2012 CDE filed a motion requesting its dismissal from the complaint. On May 25, 2012, Student filed an opposition. None of the Districts listed in the complaint filed responses or opposition.

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

DISCUSSION

Student acknowledges that CDE is the state education agency (SEA), not a local education agency (LEA). Further, the complaint acknowledges that CDE did not directly participate in any of Student's individual education plans (IEP) or provide any of Student's placements or services. Student's complaint, however, contains a specific issue directed at CDE which, in essence, claims that its "vague and contradictory" statutory scheme for pupils in foster care denies Student a free appropriate public education (FAPE). Further, as noted by both parties, when a SEA takes action that makes it impossible for LEA's to provide FAPE to a student, or fails to assure compliance with the IDEA, the SEA may be held liable as the responsible public agency. (*Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, CDE's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead requires a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

California Department of Education's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: May 29, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings