

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL REPRESENTATIVE ON
BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT, et al.

OAH CASE NO. 2012061030

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On June 25, 2012, Student filed a request for a due process hearing (complaint), naming multiple parties, including the California Department of Education (CDE), as the respondents.

On July 25, 2012, CDE filed a motion to dismiss Student's case against CDE. On July 30, 2012, Student filed an opposition to the motion.

APPLICABLE LAW

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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.)

DISCUSSION

CDE brought its motion to dismiss on the basis that it is not an agency providing special education services to Student and is not a proper party to this action.

Student alleges that Student's residential placement changed in August 2010, March 2011, and December 2011. In each case, the change of residential placement altered Student's educational placement. Student contends that this repeated change of educational placement prevented Student from adjusting to the placement and developing a rapport with the teachers. Student believes that, because CDE is responsible for ensuring compliance with special education laws, it has a responsibility to ensure a consistent placement for Student. In addition, Student alleges that CDE is violating special education law by not providing in-state residential facilities for pupils between the ages of 18 and 22. Student will turn 18 on October 3, 2012.

The IDEA requires states to develop programs for ensuring that the mandates of IDEA are met and that children eligible for special education receive a free appropriate public education (FAPE). (20 USC section 1412 (a).) California law places the primary responsibility for providing special education to eligible children on the local education agency (LEA), usually the school district in which the parents of the child reside. (See, e.g., 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. (See, e.g., 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.

Although CDE has general oversight responsibility for special education in California, it is not usually a proper respondent in a due process case under IDEA, because it is not a provider of special education services to children. (Ed. Code § 56501, subd. (a).) An exception to this general rule involves the children in the state schools for the deaf or blind. (Ed. Code, §§ 59002; 59102.)

In the instant case, Student does not allege that CDE provided any educational services to Student or was involved with Student's education as an LEA. Instead, Student relies upon CDE's general oversight authority of California special education law. However that is not the basis for a due process case against CDE under the facts alleged in this case.

In unusual circumstances, such as a situation in which California law fails to designate an LEA with responsibility to address a child's education, CDE may sometimes be a proper party. (See *Orange County Department of Education v. California Department of Education* (2011) 668 F.3d 1052.) However, Student has not alleged any facts or law to show such an unusual situation in the instant case. Instead, as Student's opposition papers admit, the law does specify which LEA is responsible for the education of a foster child such as Student. Student does not agree with the choices made by the law, but that does not change the fact that the law exists. There is no basis for a due process case against CDE.

Student next argues that CDE is violating federal law by not providing in-state residential placements for pupils with disabilities between the ages of 18 to 22. According to

Student's due process request, Student wants OAH to order CDE to "develop or obtain appropriate residential placements...."

Such a request is beyond the jurisdiction of OAH in a due process case. A due process case looks at an individual offer of placement and services to see if it would provide a child with a FAPE. OAH has no jurisdiction to order CDE to create placements or tell CDE which regulations to promulgate. If the LEA responsible for Student's education fails to offer an appropriate educational placement to Student, Student's remedy is to bring a due process hearing request against that LEA, not CDE.

ORDER

1. CDE's motion to be dismissed from this case is granted.
2. CDE is hereby dismissed as a party.
3. The matter will proceed as scheduled against the remaining parties. All hearing and other dates will remain on calendar as previously scheduled.

IT IS SO ORDERED.

Dated: July 31, 2012

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings