

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT, LONG BEACH
UNIFIED SCHOOL DISTRICT, WEST
SAN GABRIEL VALLEY SELPA AND
LOS ANGELES COUNTY DEPARTMENT
OF EDUCATION

OAH CASE NO. 2013120327

ORDER DENYING LONG BEACH
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On December 6, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Norwalk-La Mirada Unified School District (Norwalk), Long Beach Unified School District (LBUSD), West San Gabriel Valley Special Education Local Planning Area (SELPA), and the Los Angeles County Department of Education (LAC) as respondents.

On December 20, 2013, LBUSD filed a motion to dismiss as an improperly named party. On December 21, 2013, Student filed an opposition to LBUSD's motion. OAH received no response to the motion from the other respondents.

APPLICABLE LAW AND DISCUSSION

Student's complaint alleges that she is fourteen years old and in the ninth grade; her district of residence is in Norwalk-La Mirada; and she is eligible for special education under the classification of Other Health Impaired. Student has a history of severe emotional problems. During fifth and sixth grade, Student was placed at Garfield House, a treatment center. In February 2011, Parent placed Student at a nonpublic school, the Maryvale School (Maryvale), where she continued to have severe behavioral problems including being hospitalized five times. On January 31, 2013, Student was discharged by Maryvale. Norwalk, as Student's district of residence, held an Individualized Education Program (IEP) meeting which placed Student at the Lynn Pace School, operated by LAC. Student's problems continued as she suspended on at least two occasions for assaultive behavior.

Student further alleges that during the summer of 2013, Student demonstrated aggressive behaviors that caused her family to be concerned for their safety; on August 16,

2013 Student was admitted to Harborview Adolescent Residential Center in LBUSD, a skilled nursing facility, where she attended Regency High School, a non-public school associated with Harborview. LBUSD allegedly held an IEP meeting on October 2, 2013, without accommodating Parent's schedule and as a result Parent did not attend the IEP meeting; LBUSD later provided Parent with a copy of an IEP for signature; and the October 2, 2013 IEP did not offer an appropriate placement for Student based upon her unique needs. Student alleges that she is scheduled to be released from Harborview on December 18, 2013; she is not safe to return to home; and LBUSD Beach failed to offer her a residential placement in her IEP. Additionally, Student contends that LBUSD failed to offer appropriate services to her.

The complaint identifies a single issue: "Did [the respondents] individually and/or collectively offer the student a [free appropriate public education] FAPE for the academic years 2011/2012, 2012/2013 and 2013/2014?" (Complaint, p. 22.) Student contends that "Student has required a residential placement for the period 2011 through 2013." (Complaint, p. 23.) Student also contends that the Districts, including LBUSD, failed to furnish "specialized services, instruction and related services which are individually designed to provide educational benefit" to Student. (*Ibid.*) As a proposed resolution, Student seeks, among other things, a residential placement and appropriate related services and supports related to her behavior and emotional needs.

In its motion, LBUSD contends that it is not the educational agency responsible for placement in that it is only responsible to provide educational services to Student who was medically placed in a nursing facility and attended a nonpublic school within its geographical area. In its motion, LBUSD concludes: "Long Beach must be dismissed as a party, or at minimum, any and all issues and remedies must be dismissed that call for Long Beach to effectuate a placement outside of Long Beach, including but not limited to a residential placement." (Motion, p. 8.) In support of its motion, LBUSD attaches a number of documents and declarations.

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, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

Long Beach Unified School District's Motion to Dismiss is denied without prejudice.
The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: December 24, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings