

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION; WEST COVINA UNIFIED
SCHOOL DISTRICT; EAST SAN
GABRIEL VALLEY SELPA;
CALIFORNIA DEPARTMENT OF
EDUCATION

OAH CASE NO. 2014020405

ORDER GRANTING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

Student filed a request for due process hearing (complaint) on February 10, 2014, naming Los Angeles County Office of Education; West Covina Unified School District; East San Gabriel Valley SELPA and California Department of Education (CDE). On February 14, 2014, CDE filed a motion to dismiss CDE as a party arguing that it is not a proper party because it is not responsible for providing a free and appropriate public education (FAPE) to the Student. Student did not file an opposition or response to the motion. For the reasons discussed below, CDE's motion to dismiss CDE from the complaint is granted.

APPLICABLE LAW

The Office of Administrative Hearings (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 under California law as "a school district, county office of education, special education local plan area, . . . or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500, 56028.5.) The term "public agency" includes state educational agencies (SEA), local educational agencies (LEAs), "and any other political subdivisions of the State that are responsible for providing education to children with disabilities." (34 C.F.R. § 300.33 (2006).)

California law places the primary responsibility for providing special education to eligible children on the LEA. (Ed. Code, §§ 56300, 56340,, 56344(c).) 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).)

CDE is a SEA responsible for “general supervision” of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1412(a)(11)(A).) CDE generally is not a party in a due process proceeding. As an exception to this general rule, CDE may be responsible for providing special education, by default, if, under the applicable circumstances, it is otherwise impossible to identify a responsible LEA or because the Student would be unable to obtain relief from the LEA if Student prevails. (See *Orange County Department of Education v. California Department of Education* (9th Cir. 2011) 668 F.3d 1052, 1063 (holding CDE responsible for providing special education services to a parentless child where the Orange County Juvenile Court had not appointed a legal guardian or responsible adult, and then-existing California law under the facts presented did not allow identification of a “parent” for purposes of determining residency and a responsible LEA).)

DISCUSSION

As to CDE, Student’s complaint only alleges and seeks an order finding that at various times CDE failed in its oversight duties under the IDEA. Student does not allege that CDE provided any educational services to Student, made any education decisions related specifically to Student, or was involved with Student’s education as an LEA. He also does not allege that a responsible LEA does not exist or that Student would be unable to obtain relief from any of the other parties if he prevails. On the contrary, Student’s complaint makes only a single repeated reference to CDE, claiming failure to provide oversight. None of the above special circumstances under which CDE may be responsible for providing special education services have been alleged in the complaint.

Student alleges that CDE is a party because of its general oversight authority under California special education law. However, under the IDEA, CDE’s oversight authority is not a sufficient basis, by itself, for naming CDE as a party to Student’s due process complaint. OAH has no jurisdiction over CDE’s statutory oversight obligations absent allegations that would trigger the exceptions to the general rule. Student’s complaint does not allege any facts to support a claim against CDE. The motion will be granted.

ORDER

1. CDE's motion to be dismissed as a party is granted.
2. Student's complaint shall proceed to hearing against Los Angeles County Office of Education; West Covina Unified School District; and East San Gabriel Valley SELPA.
3. All dates in this matter are confirmed.

DATE: February 21, 2014

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings