

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL
DISTRICT; CALIFORNIA DEPARTMENT
OF EDUCATION.

OAH CASE NO. 2014030123

ORDER DENYING CALIFORNIA
DEPARTMENT OF EDUCATION'S
MOTION TO DISMISS

On February 28, 2014, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH) naming respondents Inglewood Unified School District (District) and the California Department of Education (CDE). The complaint alleged that, at all relevant times, Student resided within the District, was eligible for special education, and was denied a free appropriate public education (FAPE) by the District because the District: failed to provide Student an appropriate educational program and related services to address Student's unique needs; failed to adequately assess Student in all areas of his suspected disability; failed to offer Student instruction in an extended school year; and failed to allow Student's parent (Parent) to participate fully in developing Student's individualized education program (IEP).

Student named CDE as a respondent based on the State's enactment in 2012 of Senate Bill Number 533 (2011-2012 Reg. Sess.). This legislation provided for an emergency loan to the District to avoid its insolvency, and pursuant to it, under subdivision (b) of Section 41326 of the Education Code, the Superintendent of Public Instruction (State Superintendent) assumed "all legal rights, duties, and powers of the governing board" of the District, and appointed a state administrator "to act on [the State Superintendent's] behalf . . . under the direction and supervision of the Superintendent" to assume control of the District and take actions return the District to fiscal solvency.

On March 6, 2014, CDE filed a Motion to Dismiss CDE from this matter on grounds that the complaint fails to state a claim against CDE that is subject to OAH jurisdiction, because the complaint does not allege that CDE was involved in any decisions regarding Student, nor does it set forth facts under which CDE could be responsible for providing Student a FAPE. Student filed an opposition to CDE's motion to dismiss on March 11, 2014, and CDE filed a reply in support of its motion on March 20, 2014.

APPLICABLE LAW AND DISCUSSION

Law Regarding Motions to Dismiss

The Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) and its state law counterparts do not set forth a procedure for dismissing IDEA-related claims on the merits without first affording the petitioning party a chance to develop a record at hearing. The Administrative Procedures Act (Gov. Code, § 11340 et seq.) requires that parties appearing before the OAH receive notice and an opportunity to be heard, including the opportunity to present and rebut evidence. (Gov. Code, § 11425.10, subd. (a)(1).) However, at a prehearing conference, an administrative law judge (ALJ) may address such matters “as shall promote the orderly and prompt conduct of the hearing” (Gov. Code, § 11511.5, subd. (b)(12)), and at hearing, an ALJ may take action “to promote due process or the orderly conduct of the Hearing.” (Cal. Code Regs., tit. 1, § 1030, subd. (e)(3).) Also, as an administrative tribunal, the OAH has jurisdiction to determine the extent of its own jurisdiction and power to act. (See *People v. Williams* (2005) 35 Cal. 4th 817, 824.)

Accordingly, OAH may dismiss a matter in its entirety, or one or more claims, where it is evident from the face of the complaint that the alleged issues fall outside of OAH jurisdiction or the pleaded facts cannot sustain a claim. Such circumstances may include, among other things, complaints that assert civil rights claims or claims seeking enforcement of a settlement agreement, or that assert claims against an entity that cannot be legally responsible for providing special education or related services under the facts alleged.

As discussed below, CDE’s motion to dismiss CDE from this matter is denied because the facts pleaded in the complaint, if true, are sufficient to establish that Senate Bill 533 and Education Code section 41326 put CDE’s administrative agent, and hence CDE, in the shoes of District’s board, making CDE ultimately responsible for the actions of District’s officers and employees, and therefore a proper party to due process hearing procedures on Student’s claim that District failed to provide Student a FAPE.

Law Regarding CDE’s Responsibility to Provide Students a FAPE, in General

To protect the rights of children and their parents and ensure that all children with disabilities have available to them a FAPE, the IDEA requires states to establish and maintain procedures that include the opportunity 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 [FAPE] to such child.” (20 U.S.C. § 1415(b)(6) (A).) The Education Code grants parents, guardians and the public agency involved in the education of the child the right to present a due process complaint involving: a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child or 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. (Ed. Code, § 56501, subd. (a)(1)–(4).) The jurisdiction of OAH is limited to these enumerated circumstances. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Special education due process hearing procedures extend to a student’s parent or guardian, to the student under certain conditions, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) The “public agency” may be “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.) Similarly, the Code of Federal Regulations provides that the term “public agency” encompasses state educational agencies (SEAs) such as CDE, as well as local educational agencies (LEAs) such as the District, “and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (34 C.F.R. § 300.33 (2012).)

The IDEA leaves it to each state to establish mechanisms for determining which of the state’s public agencies is responsible for providing special education services to a particular student, and procedures for resolving interagency disputes concerning financial responsibility. (20 U.S.C. § 1400(d)(12)(A); *Manchester School District v. Crisman* (1st Cir. 2002) 306 F.3d 1, 10-11.) Under California law, the public agency responsible for providing education to a child between the ages of six and 18 generally is the school district in which the child’s parent or legal guardian resides, (Ed. Code §48200), although certain responsibilities, such as the provision of special education services in juvenile court schools, may be regionalized by local plans and administered by county offices of education (Ed. Code, §§ 56140; 56195; 56195.5; 56205-56208; 46845 et seq.).

Under the IDEA, an SEA such as CDE is responsible for “general supervision” of state special education programs to ensure, among other things, that IDEA requirements are met. (20 U.S.C. § 1400(d)(11)(A).) However, CDE generally is not a party in a due process proceeding because a LEA – a school district or county office of education – is in most instances the public agency that is responsible for providing special education services, and “involved in any decisions regarding [the] pupil.” (Ed. Code § 56501, subd. (a).) Under normal circumstances not involving a LEA operating under an appointed state administrator, three exceptions exist to this general rule: First, CDE is the responsible public agency in due process hearings involving students attending the state schools for the deaf and for the blind that are operated by CDE (Ed. Code, §§ 59002; 59102). Second, CDE may be responsible for providing special education, by default, if conduct of the legislature or CDE has made it impossible to identify a responsible LEA. (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); *Los Angeles Unified School Dist. v. Garcia* (9th Cir. 2012) 669 F.3d 956, 960 (citing *Orange County*).) Third, CDE may be

responsible for providing special education services where the LEA is unable or unwilling to provide those services. (*Garcia*, at p. 960, citing 20 U.S.C. § 1413(g).)¹

Law Regarding CDE's Responsibility for District's Provision of a FAPE Under Senate Bill 533 and Education Code Section 41326

Student's opposition to CDE's motion confirmed that Student's sole basis for naming CDE was the appointment of the state administrator and the administrator's assumption of the legal rights, duties and powers of the District's board. Student claimed that CDE was a "necessary" or indispensable party – one without whom complete relief could not be obtained (Civ. Code, § 389, subd. (a)(1)) – because "CDE is the entity with power to make decisions on behalf of the District and . . . is the entity ultimately responsible for providing [Student] a FAPE."

Senate Bill 533 and Education Code section 41326 contained no language that expressly made CDE responsible for the District's provision of special education services to students while under control of the state administrator. However, the administrator's assumption of the legal rights, duties, and powers of the District's governing board raises the question of whether the appointment incidentally creates a fourth exception to the general rule and makes CDE responsible for the District's provision of a FAPE to District students.

This matter does not involve the schools for the deaf or blind, nor is there any question that District was, or, absent the appointment of a state administrator, would have been, the LEA responsible for providing Student a FAPE. The issues, then, are: (1) whether the state administrator's assumption of all legal rights, duties, and powers of the District's governing board rendered the District unwilling or unable to provide special education services and a FAPE to Student; or (2) if the District was still willing and able to provide Student special education services and a FAPE, whether the state administrator's assumption of the board's legal rights, duties and powers made the CDE jointly responsible with the District in the event of a District failure to provide a FAPE.

DISTRICT'S WILLINGNESS AND ABILITY TO PROVIDE SPECIAL EDUCATION SERVICES

Student does not contend that the District has been unable or unwilling to provide special education services to Student since the appointment of the state administrator. Instead, Student's complaint named the District as the LEA responsible for Student's special education and acknowledged that Student "receives special education services from [District] as a student with autism." Student's substantive allegations all concerned special education services that the District provided to Student after March 15, 2013 – following the

¹ CDE's motion additionally acknowledges an exception that is a subset of the third: namely, that CDE may be the responsible agency if actions of the legislature or the CDE prevent the relevant LEA from providing services. (Citing, *Gadsby v. Grasmick*, 109 F.3d 940, 955 (4th Circuit 1977) (Maryland SEA may be required to reimburse parents for out-of-state tuition costs for an appropriate private school special education placement where state law prevented the LEA from providing the reimbursement.)

appointment of the state administrator. Student contended that these services provided by the District were inadequate, not non-existent.

Also, nothing in Senate Bill 533 or Education Code section 41326 abolished or suspended the District as a legal entity, or prohibited its ongoing operation. Instead, the State Superintendent, acting through the state administrator, “assume[d] control of the district in order to ensure the district’s return to fiscal solvency.” (Ed. Code, § 41325, subd. (a).) The state administrator was specifically directed to “work with the staff and governing board of the [District] to identify the procedures and programs that the school district will implement during the 2012-2013 school year and future years” (Sen. Bill No. 533, § 4, subd. (a)), and was authorized to “enter into agreements on behalf of the district.” (Ed. Code, § 41326, subd. (a)(10)(F).) In short, Senate Bill 533 and Education Code section 41326 contemplated that the District would continue its operations uninterrupted, but under new management. CDE therefore was not responsible for providing Student special education services based on any existing inability or unwillingness of the District to do so.

POTENTIAL FUTURE INABILITY OF DISTRICT TO PROVIDE SPECIAL EDUCATION SERVICES

Student also suggested that, in the future, the District might become unable to provide Student special education services, at which point CDE would become responsible for doing so. While it is true that the powers of the state administrator include the power to “implement substantial changes in the fiscal policies and practices of the qualifying school district, including, if necessary, the filing of a [bankruptcy petition]” (Ed. Code, § 41326, subd. (b)(10)(A)), Student’s claim based on a possible future inability of District to provide special education services “rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all’” (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted]), and is subject to dismissal under the ripeness doctrine, the purpose of which is “to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

CDE therefore is not responsible for providing Student special education services based on a potential future inability or unwillingness of the District to do so.

CDE’S RESPONSIBILITY FOR DISTRICT ACTIONS ARISING FROM SENATE BILL 533 AND EDUCATION CODE SECTION 41326

The governing board of a school district generally may exercise any power of the district, must discharge any legal duty of the district, and is ultimately responsible for the performance of any power or duty that it delegates to district officers or employees. (Ed. Code, § 35161.) Among its specific powers and duties, a governing board has authority over the district’s special education programs (Ed. Code § 56195.5, subd. (a).) Also, the governing board may sue and be sued in the name by which the district is designated. (Ed. Code, § 35162.) A suit naming a school district is, under Education Code section 35162, effectively a suit against the district’s governing board.

Pursuant to Senate Bill 533 and Education Code section 41326, subdivision (b), the State Superintendent, acting through his or her agent, the state administrator, assumed all of the above powers and duties of the District's governing board. This included the power to exercise authority over the District's special education programs, and to sue and be sued in the District's name. During the period that the State Superintendent exercises his authority, the District's governing board has no rights, duties, or powers. (Ed. Code, § 46321, subd. (c)(1).)

The State Superintendent is, by virtue of his or her position, the Director of Education for the CDE (Ed. Code, § 33303), the CDE official "in whom all executive and administrative functions . . . are vested and who is the executive officer of the State Board of Education." (Ed. Code, § 33301, subd. (b).)² The State Superintendent may be sued in his official capacity. (See, e.g., *Alejo v. Torlakson* (2013) 212 Cal.App.4th 768 [151 Cal.Rptr.3d 420].) A suit brought against the State Superintendent in his or her "official capacity" is to be treated as a suit against CDE.³ (See, e.g., *Pitts v. County of Kern* (1998) 17 Cal.4th 340, 350 [70 Cal.Rptr.2d 823], quoting *Kentucky v. Graham* (1985) 473 U.S. 159, 166 [105 S.Ct. 3099, 3104, 87 L.Ed.2d 114] ("Official-capacity suits . . . generally represent only another way of pleading an action against an entity of which an officer is an agent. . . .[citation omitted]. As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity [citation omitted].")⁴)

² CDE's organization was reviewed in *State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, [16 Cal.Rptr.2d 727]. ("[CDE] is administered through a State Board of Education (Board), appointed by the Governor and confirmed by the Senate, and an elected Superintendent of Public Instruction (Superintendent). (Cal. Const., art. IX, § 2; Ed. Code, §§ 33000, 33301, 33303.) The Board is 'the governing and policy determining body of the department.' (§ 33301, subd. (a).) The Superintendent is vested with all executive and administrative functions. (§ 33301, subd. (b).")

³ By contrast, a "personal-capacity" suit is one against a government official as an individual, seeking to impose personal liability on the official for actions he or she took under color of state law. Student has not asserted such a claim.

⁴ Although CDE itself is not mentioned in the text of Senate Bill 533 and Education Code section 41326, its direct involvement in decision-making in the District under the State Superintendent's stewardship is evident from various sources, including CDE news releases regarding its involvement in the District. Administrative notice is taken of CDE news release #12-85 (September 14, 2012) ("The Department of Education will consult with the Los Angeles County Office of Education to name an experienced administrator to oversee the long and difficult process of returning the district to solvency and, ultimately, local control") and news release #12-109 (December 7, 2012) ("[The state administrator] stepped down after [CDE] learned of financial commitments he had made without the required CDE approval")

Accepting Student's allegations as true for purposes of this motion, the ALJ finds that, although Student may obtain complete relief in this matter from District without asserting a claim against CDE, and CDE is not an indispensable party, Senate Bill 533 and Education Code section 41326 put CDE's administrative agent, and hence CDE, in the shoes of District's governing board. CDE was thus ultimately responsible for the actions of District's officers and employees, and therefore a proper party to due process hearing procedures on Student's claim that District failed to provide Student a FAPE.

ORDER

CDE's Motion to Dismiss is denied. The matter will proceed against District and CDE, on the previously scheduled dates.

IT IS SO ORDERED.

DATE: April 16, 2014

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings