

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALVORD UNIFIED SCHOOL DISTRICT
AND RIVERSIDE COUNTY OFFICE OF
EDUCATION.

OAH Case No. 2014080740

ORDER GRANTING MOTION TO
DISMISS RIVERSIDE COUNTY
OFFICE OF EDUCATION AS PARTY

On August 19, 2014, Parent on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings naming the Alvord Unified School District and the Riverside County Office of Education as respondents.

On September 4, 2014, RCCOE filed with OAH a motion to dismiss itself as a respondent.

On September 5, 2014, Student filed with OAH an opposition to the motion to dismiss. OAH did not receive a response from Alvord.

APPLICABLE LAW AND DISCUSSION

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 sole issue is whether RCCOE is a proper party, a matter easily proven without a formal summary judgment procedure.

In general, Individuals with Disabilities Education Act due process hearing procedures extend 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.) Thus, although RCCOE may fit the definition of “public agency” set forth in the IDEA, to be a proper party for a due process hearing RCCOE must also be involved in making decisions regarding a particular student.

Student, in his complaint, alleges that Alvord is denying Student a free appropriate public education in its triennial individualized education program proposed at the June 10, 2014 IEP team meeting. Specifically, Student objects to Alvord's proposal to place Student in a RCCOE program at Stokoe Elementary School. Student also claims that Alvord failed to arrange for an agreed-upon assessment of Student. Student's proposed resolution is for OAH to order Alvord to perform the previously agreed upon assessment related to Student's anxiety and continued placement at Hope Academy, a nonpublic school.

In its opposition, Student admits that RCCOE has neither assessed nor provided services to Student. In his opposition, Student states that the complaint alleges that RCCOE has agreed with Alvord to admit Student in its program.

There is no dispute that RCCOE has not been a party to developing Student's IEP. RCCOE is in the identical position as would be a nonpublic school would be when a District offers placement in such a setting. Thus, RCCOE is not responsible for providing Student with a FAPE and is not a proper party.

ORDER

RCCOE's Motion to Dismiss is granted. RCCOE is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining party, Alvord.

DATE: September 8, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings