

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED  
SCHOOL DISTRICT AND CALIFORNIA  
DEPARTMENT OF EDUCATION.

OAH Case No. 2015080011

ORDER DENYING CALIFORNIA  
DEPARTMENT OF EDUCATION'S  
MOTION TO DISMISS

On July 28, 2015, Parents, conservators for Student, filed with the Office of Administrative Hearings a Request for Due Process Hearings naming Monterrey Peninsula Unified School District and the California Department of Education. Student alleges that Monterrey has failed to provide Student with a free appropriate public education during school years 2013-2014, 2014-2015, and 2015-2016. For 2015-2016, Student alleges that he has not been offered an appropriate placement. As to CDE, Student alleges that it has denied Student a free appropriate public education because it has failed to ensure that appropriate residential treatment facilities are available within California for persons eligible for special education services who are between 18 and 22 years of age. Student also alleges that CDE prevented parents from meaningfully participating in the IEP decision-making process by CDE's failure to ensure residential treatment placements for students 18 to 22.

On August 3, 2015, CDE filed a motion to dismiss on grounds that it is a state education agency and has only "general supervisory responsibility" rather than being responsible for providing Student with a free appropriate public education.

On August 6, 2015, Student filed an opposition to CDE's motion. CDE filed a response to Student's opposition on August 10, 2015. Monterrey has not filed a responsive pleading to the motion.

APPLICABLE LAW

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.)

California law places the primary responsibility for providing special education to eligible children on the local education agency, usually the school district in which the parents of the child reside. (See, e.g., Ed. Code §§ 56300, 56340 [describing local education agency 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 local education agency. (See, e.g., Ed. Code, 56502, subd. (d)(2)(B) [local education agency’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.)

Here, Student is contending that CDE, by its actions to prevent residential treatment facilities in California for students between 18 and 22 years of age, prevents local education agencies from being able to provide free appropriate public education to this population in violation of 20 U.S.C. section 1400(d)(1) and Education Code section 56000, subdivision (a). Student, in effect, is alleging that CDE’s failure to license such facilities amounts to making a decision as to those services provided to Student.

CDE cites as authority *Student v. Fremont Union High School District* (August 13, 2015) OAH Case No. 2012070635). In *Fremont*, Student alleged that CDE should be held liable to provide Student a free appropriate public education because there were no residential placements within California that will accept student due to his age. In its order granting CDE’s motion, the ALJ noted that based on the allegations that no such facilities exist was not sufficient to give OAH jurisdiction.

The ALJ did note: “The general oversight authority of CDE is not sufficient to sustain a due process complaint. 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, Parent has not alleged any facts or law to show such a circumstance in this case.”

CDE also contends that Student makes no claim that CDE is providing special education or related services or is involved in any decisions as to Student. Student refutes that contention by alleging that because CDE, which has failed to meet its statutory duties to provide residential treatment facilities for special education student above the age of 18, is in

effect making such a decision since its actions are preventing school districts from providing such services.<sup>1</sup>

The active prevention of permitting placement opportunities is in effect making a decision as to Student's placement. Here, unlike in Fremont, Student has alleged facts against CDE rather than merely alleging that no such placement exists. Student has raised an issue of fact as to the role of CDE in preventing Monterrey from providing an appropriate educational placement.

Accordingly, CDE's motion to dismiss is DENIED without prejudice.

DATE: August 17, 2015

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> Neither side has addressed whether either title 22 California Code Regulations, sections 80001, subd. (a), 80024, subd. (b), or 85000 et seq., have any application to this matter, or whether CDE is a proper party as it does not license group home facilities in California.