

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED
SCHOOL DISTRICT, CALIFORNIA
DEPARTMENT OF EDUCATION, AND
CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES

OAH Case No. 2015080011

ORDER GRANTING CALIFORNIA
DEPARTMENT OF SOCIAL
SERVICES' MOTION TO DISMISS

On September 3, 2015, Student filed an amended complaint with the Office of Administrative Hearings. Student alleges that Monterey Peninsula Unified School District denied him a free appropriate public education during the 2013-2014, 2014-2015, and 2015-2016 school years. Student also alleges that the California Department of Education and the Department of Social Services denied Student a free appropriate public education by failing to ensure that appropriate residential treatment facilities are available in California for persons eligible for special education services who, like Student, are between 18 and 22 years of age. Student seeks to have OAH order that CDE and DSS develop residential treatment centers in California for students between the ages of 18 and 22.

On August 31, 2015, CDE filed a motion to dismiss on grounds that it is a state education agency and has only "general oversight responsibility" rather than being responsible for providing Student with a free appropriate public education. OAH granted the motion on September 21, 2015 and dismissed CDE as a party.

On September 16, 2015, CDSS filed a motion to dismiss on the grounds that, although it is a public agency, it is not responsible for providing educational services under the Individuals with Disabilities Education Act, and OAH has no jurisdiction over the agency. Student filed an opposition on September 21, 2015.

APPLICABLE LAW AND DISCUSSION

Parents have the right 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 free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) 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.

Special education due process hearing procedures extend to the 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.)

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 educational 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.

Student argues that CDSS is a “public agency,” as defined under Education Code sections 56500 and 56028.5, and therefore it bears responsibility for ensuring that California has residential treatment centers within its boundaries to serve students who require a residential treatment center placement under the IDEA. By extension of that principle, Student argues that OAH has jurisdiction over CDSS and can order the agency to create residential treatment centers within California. CDSS argues that it is not an agency bearing any responsibility for providing special education services to students under the IDEA, and OAH has no jurisdiction to determine the issue as presented by Student’s amended complaint.

Student’s claims are beyond the jurisdiction of OAH in a due process case. A due process case examines an individual offer of placement and services to determine whether it provided a particular child with a FAPE. Student’s reliance on *Educational Rights Holder v. Contra Costa County Probation Department* (OAH Case Number 2013080471) is not persuasive. In that case, the ALJ allowed the local probation department to remain as a party because the agency allegedly played a direct role in affecting the local educational agency’s ability to provide a FAPE.

Here, as CDSS correctly argues, Student does not assert that CDSS participated in the development of Student's educational program or had any direct or supervisory input or interaction with the local educational agency as to what his placement should be. As such, CDSS is not a public agency involved in any decisions regarding a pupil, or providing special education or related services to individuals with exceptional needs, over whom OAH has jurisdiction.

ORDER

1. California Department of Social Services' motion to dismiss is granted.
2. California Department of Social Services is dismissed as a party from this matter.
3. All dates previously set are confirmed as to the remaining parties.

DATE: September 23, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings