

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WISEBURN ELEMENTARY SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2011020831

ORDER DENYING MOTION TO
DISMISS

On February 23, 2011, Student filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint) naming Wiseburn Elementary School District (District) and Los Angeles County Office of Education (County) as respondents. On March 7, 2011, County filed a motion to dismiss the complaint. On March 10, Student filed his opposition to County's 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.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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); Ed. Code, § 56501, subd. (a).)

DISCUSSION AND ORDER

County contends it should be dismissed because Student has never been enrolled in a County program and County is not obligated to provide Student a FAPE because of its limited involvement with Student. The moving and opposing papers set forth the following:

Student has never been enrolled in a County educational program, nor did he accept the offered individualized education program (IEP). However, County provided Student with a speech and language evaluation; had a representative attend his IEP team meeting where the IEP at the base of this dispute was developed; and, offered to provide Student with special education services. Accordingly, County's involvement in Student's educational program is sufficient to render it an appropriate party to this matter.

County is a public agency who was involved in decisions regarding Student; it evaluated, identified, and offered some special education services. Accordingly, it cannot be said as a matter of law that County is an improper party to this matter.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure. Here, County's motion is not limited to matters falling outside of OAH's jurisdiction, but instead County seeks a ruling on whether its participation in Student's education was sufficiently tangential that it should be summarily dismissed. The degree of County's involvement and any consequences thereof is an appropriate issue for hearing, but in light of the aforementioned authorities, cannot be decided by way of a motion to dismiss. Accordingly, County's motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: March 15, 2011

/s/

GARY GEREN
Administrative Law Judge
Office of Administrative Hearings