

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEAN VIEW SCHOOL DISTRICT;
HUNTINGTON BEACH CITY SCHOOL
DISTRICT; WEST ORANGE COUNTY
CONSORTIUM FOR SPECIAL
EDUCATION.

OAH CASE NO. 2010110131

ORDER GRANTING MOTION TO
DISMISS

On November 1, 2010, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a Request for Mediation and Due Process Hearing (Complaint) that named the Ocean View School District (OVSD), the Huntington Beach City School District (HBCSD) and the West Orange County Consortium for Special Education (SELPA).

On November 3, 2010, OAH issued an Initial Scheduling Order in the matter, setting a mediation for December 7, 2010, a prehearing conference for December 15, 2010, and a due process hearing for January 4, 2011.

On November 9, 2010, counsel for OVSD, HBCSD and the SELPA filed with OAH a Motion to Dismiss all Claims. The motion was supported by the Declaration of Hollis Pass, with exhibits, and the Declaration of Judi-Graham-Johnson, with exhibits.

On November 9, 2010, Parent filed with OAH a request for a 30 day extension to respond to the Motion to Dismiss all Claims. Parent has not otherwise filed a response to the motion.

BACKGROUND

The following facts are based upon the Complaint, the Motion to Dismiss all Claims and supporting declarations, and the exhibits attached to these documents. Student is a five year-old boy who resides with Parent within the boundaries of the HBCSD. In May 2008, HBCSD found Student eligible for special education and related services under the disability category of speech or language impairment. In May and July 2010, Student's individualized education program (IEP) team met and offered Student for his kindergarten year a special education program that included speech and language services in the amount of two 30

minute sessions per week. Parent consented to the May and July 2010 IEP. At the start of the 2010-2011 school year, in September 2010, Parent placed Student in a private parochial school in Huntington Beach located within the boundaries of the OVSD. On October 7, 2010, OVSD convened an individual service plan (ISP) meeting. Upon the conclusion of this meeting, OVSD offered parent the following equitable services for the time period from October 7, 2010 to October 7, 2011: speech and language consultation services in the amount of 15 minutes per week, and academic consultation services in the amount of 15 minutes per month. Parent did not consent to the ISP.

APPLICABLE LAW AND DISCUSSION

Student is presently in a category of pupils known as “private school children with disabilities” which refers to children with disabilities enrolled by parents in private schools or facilities. (Ed. Code, § 56170.) The basic rule for such pupils is that “No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.” (34 C.F.R. § 300.137(a)(2006); see also 20 U.S.C. § 1412(a)(10)(A); Ed. Code, 56174.5, subd. (b).)

Instead, under the Individuals with Disability Education Act, local educational agencies (LEA) “only have an obligation to provide parentally-placed private school children with disabilities an opportunity for equitable participation in the services funded with Federal Part B funds that the LEA has determined, after consultation, to make available to its population of parentally-placed private school children with disabilities.” (71 Fed.Reg. 46595 (Aug. 14, 2006); see also 20 U.S.C. § 1412(a)(10)(A)(i)(I); 34 C.F.R. §§ 300.132(a), 300.137(b)(2006); Ed. Code, § 56173.) The school district, or LEA, where the private school is located has the responsibility for providing the parentally-placed private school child with such equitable services. (34 C.F.R. § 300.133 (2006); Ed. Code, § 56172, subd. (a).) The responsible school district must provide equitable services to a parentally-placed private school child through a service plan. (34 C.F.R. § 300.138(b) (2006); Ed. Code, § 56174.5, subd. (b).)

A dispute regarding a service plan that provides equitable services to a parentally-placed private school child is properly the subject of State complaint procedures. (34 C.F.R. § 300.140(c)(2006).) Such a dispute is not governed by the due process provisions that apply with regard to disagreements regarding the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to such child. (34 C.F.R. § 300.140(a)(2006).) Accordingly, OAH does not have the authority to hear and decide cases in which a parent raises a dispute regarding the equitable services set forth in a service plan for a parentally-placed private school child. (Ed. Code, § 56501, subd. (a); *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

In the Complaint, Parent raises issues concerning the lack of implementation of the speech and language services in Student’s May and July 2010 IEP, and concerning the level of services in Student’s October 2010 ISP. In this regard, the Complaint alleges in pertinent

part: “After enrolling (Student) in this private school not one of the people listed on the sheet offered any help except for a service plan that was offered which meant talking to his current teacher once a month for 15 min. My son has had an IEP and the IEP needs to be followed regardless of the school he goes to. You cannot discriminate against any child because he goes to a private school. My son has special needs and he needs these services. Not to mention not one person told me anything about what would happen or the possibility of losing any speech services if I put him in private school.”

The foregoing allegations in the Complaint show that Parent has a misunderstanding of special education law. When Parent removed Student from HBCSD and placed him in the private parochial school, she forfeited her son’s individual entitlement to receive the special education program and related services set forth in his May and July 2010 IEP. With the private school placement, Student became entitled to, and was provided by OVSD, a service plan that contained equitable services in the form of teacher consultations. Neither OVSD, nor HBCSD and the SELPA, committed an act of discrimination against Student by moving him from an IEP to an ISP. Further, any dispute by Parent against the level of services in Student’s ISP is outside the jurisdiction of OAH.

For these reasons, the pending Complaint must be dismissed.

ORDER

1. The Motion to Dismiss all Claims, brought by the Ocean View School District, the Huntington Beach City School District and the West Orange County Consortium for Special Education, is granted.

2. Student’s Request for Mediation and Due Process Hearing is hereby dismissed, and the hearing dates in this matter are vacated.

Dated: November 17, 2010

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings