

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

OAKDALE JOINT UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012020542

ORDER DENYING MOTION TO
DISMISS

On February 15, 2012, the Oakdale Joint Unified School District filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming Student. The District's complaint seeks to assess Student without her Parents' consent. On February 21, 2012, Student filed a Motion to Dismiss, alleging that the District did not have the legal authority to assess without her Parents' consent because Parents had paid for a private school placement. On February 23, 2012, the District filed an opposition.

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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility].) 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.)

Education Code section 56346, subdivision (f), states:

With the exception of a parent of a child who fails to respond pursuant to subdivision (b),¹ or refuses to consent to services pursuant to subdivision (b), if the public agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a resolution session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement, unless the parent and the public agency agree otherwise.

34 Code of Federal Regulations, parts 300.300, subdivision (d) provides:

(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section); and

(ii) The public agency is not required to consider the child as eligible for services under Sec. Sec. 300.132 through 300.144.

DISCUSSION

Student requests that OAH dismiss the District's complaint that seeks to assess Student without her Parents' consent because Parents removed Student from a District school and are paying for the private school placement at their own expense. The District contends that it has the right to assess Student because Parents are seeking that the District provide a full inclusion placement in their pending case against the District. (OAH Case No. 2011120409.)

The basic facts of this case are not disputed. Student was assessed by another school district in May 2010 and found eligible for special education services. Student moved into the District in August 2011. On October 17, 2011, Parents notified the District that they

¹ Education Code section 56346, subdivision (b) governs a District's initial offer of services after finding a student initially eligible for special education services.

were unilaterally removing Student from her District placement and placing her in a private school as Parents did not agree with the District's offer of a special day class because Parents contended that Student should be in a general education setting. On December 12, 2011, Student filed a complaint against the District, which seeks that the District provide a full inclusion placement and reimbursement Parents' unilateral private placement. The District has never assessed Student. On February 7, 2012, the District sent Parents an assessment plan, to which Parents had not responded to by the time the District filed its complaint.

Student's attempt to use 34 Code of Federal Regulations, parts 300.300, subdivision (d)(4), to prevent the District from using the consent override provision is misplaced. 34 Code of Federal Regulations, parts 300.300, subdivision (d), applies in instances when a parent has enrolled the child in a private school and is not seeking special education services from the school district, and the parent's refusal to consent to the school district's assessment relieves the school district from providing services through an individual services plan. (34 C.F.R. §§ 300.47, 300.132(b) and 300.138.) In this case, Parents unilaterally removed Student pursuant to 34 Code of Federal Regulations, parts 300.148, subdivision (d), which covers a parent's request for private school enrollment at public expense. Therefore, because Parents are seeking that the District reimburse them for their unilateral private placement and are seeking that the District provide a full inclusion placement, the District has the right to a hearing to determine whether it may assess Student without her Parents' consent.

ORDER

Student's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: February 27, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings