

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PAJARO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013020756

ORDER GRANTING MOTION TO
DISMISS STUDENT'S COMPLAINT

On February 21, 2013 Student filed a Request for Mediation and Due Process Hearing (Complaint) with the Office of Administrative Hearings (OAH). District filed a Motion to Dismiss Student's Complaint on March 13, 2013. Student filed a response opposing dismissal on March 13, 2013.

District contends that Student's Complaint warrants dismissal because the complaint alleges District's failure to complete an assessment to which all parents ultimately agreed. District asserts that the issue is not ripe for adjudication because the time to complete the assessment has not expired. District issued the assessment plan on January 18, 2013 and petitioner consented to assessment on January 24, 2013. District has scheduled an IEP meeting for March 21, 2013, within the 60-day timeline to complete and review the assessment. Accordingly, the complaint presents no justiciable case or controversy upon which OAH may award relief. As discussed below District's motion is granted.

APPLICABLE LAW

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.)

DISCUSSION

OAH has the authority to grant motions to dismiss allegations that are facially outside of OAH jurisdiction to decide questions alleging denial of a FAPE. Student's complaint contains three issues. Issue one alleges that District denied Student an IEP and did not complete an assessment initially consented to by the petitioning stepparent. Issues two and three repeat and rearticulate the claims made in Issue one. However, as stated above, Student's complaint is premature and the issue raised in the complaint is not ripe for hearing. Accordingly, the complaint is dismissed

ORDER

1. District's Motion to Dismiss Student's complaint is granted.
2. Student's complaint is dismissed without prejudice to Student re-filing it, if, after the expiration of 60 days from the date Parents signed the assessment plan, the assessment has not been completed and an IEP team meeting held.
3. A parent who is not represented by an attorney may request that the Office of Administrative Hearings (OAH) provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint. Parents are encouraged to contact OAH for assistance in the event they file the complaint again without the assistance of an attorney.

Dated: March 15, 2013

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings