

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014080584

ORDER DENYING MOTION TO
DISMISS

On August 12, 2014, Student filed a request for due process hearing (complaint), naming the San Juan Unified School District as the respondent.

On August 28, 2014, San Juan filed a motion to dismiss Student's complaint, or in the alternative, a notice of insufficiency.¹ Student filed an opposition to the motion on August 29, 2014.

San Juan's motion seeks to dismiss Student's complaint basically on the grounds that Student fails to state a claim against it. San Juan contends Student's complaint only challenges the location of the placement San Juan has offered him and does not allege that the placement fails to offer Student a free appropriate public education. As discussed below, the motion is denied.

APPLICABLE LAW, DISCUSSION AND ORDER

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

¹ In a separate order issued September 3, 2014, OAH found San Juan's notice of insufficiency to be untimely and therefore deemed Student's complaint sufficient.

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 the Office of Administrative Hearings is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a motion to dismiss for “failure to state a claim” procedure, other than through a notice of insufficiency. In this case, San Juan’s contention that Student has not adequately stated a claim is basically a notice of insufficiency. San Juan did not file a timely notice of insufficiency and OAH has therefore deemed Student’s complaint sufficient. San Juan cannot circumvent the statutory requirement that a notice of insufficiency be filed within 15 days of its receipt of Student’s complaint by filing a motion to dismiss on the same grounds. Accordingly, San Juan’s motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: September 4, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings