

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2014110615

ORDER GRANTING MOTION TO
DISMISS

On November 10, 2014, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint), naming the Santa Monica-Malibu Unified School District as respondent.

On November 25, 2014, Santa Monica-Malibu filed a Motion to Dismiss the case, alleging that Student has “no legal right to bring this Complaint due to his unilateral and unequivocal revocation of consent to special education eligibility.”.

On November 26, 2014, Student filed a non-opposition to the motion to dismiss.

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

In the present matter, Student's complaint contains a single issue: "The District denied Student a FAPE (free appropriate public education) by failing to offer or provide Student with a FAPE for the period beginning November 15, 2013 when parents revoked their consent for Student's continuing eligibility under the IDEA (Individuals with Disabilities Education Act) and after the District properly exited Student from special education." Student makes no allegation that Santa Monica had any obligation to provide Student with a FAPE despite Parents' revocation of consent for Student to be eligible for special education.

Based on the pleadings on file, Student was eligible and receiving special education services from Santa Monica prior to November 13, 2013. On November 12, 2013, Parents revoked their consent for Student to receive special education services in writing to Santa Monica. Santa Monica then offered to provide Student with services and accommodations through Section 504 of the Rehabilitation Act per parental request. Parents then withdrew their request for Section 504 services.

On November 13, 2014, Parents requested that Student be assessed for eligibility for special education. Santa Monica then forwarded an assessment plan to Parents for their consent. Parents did not consent to any assessment plans submitted by Santa Monica. On February 20, 2014, Santa Monica filed a Request for Due Process Hearing with OAH, in OAH Case Number 2014020775, seeking to compel Parents' consent to the offered assessment plans. In OAH Case Number 2014020775, Student filed a motion to dismiss on grounds Parents were not requesting special education services for Student. That case was later withdrawn by Santa Monica.

In his non-opposition to this motion, Student stated: "Parents and Student do not oppose the Motion and agrees that dismissal is proper under the facts as pled in the due process complaint on file." (Student's Non-opposition to Motion to Dismiss, p. 1.)

Thus, Student admits that he is not entitled to receive special education services due to Parents' revocation of their request for Student to be eligible for special education. The sole issue of the complaint is not based on any actions of Santa Monica under the IDEA or related California law. Thus, OAH is without jurisdiction to hear the matter.

ORDER

Santa Monica-Malibu Unified School District's Motion to Dismiss is GRANTED.
The complaint is dismissed.

IT IS SO ORDERED.

DATE: December 3, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings