

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ELK GROVE UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016020899

ORDER DENYING MOTION TO
DISMISS

On February 19, 2016, Elk Grove Unified School District filed a request for due process hearing (complaint), naming Parent on behalf of Student. The sole issue raised by Elk Grove in the complaint is whether Elk Grove is entitled to conduct assessments of Student pursuant to the January 12, 2016 assessment plan without Parent's consent.

On April 19, 2016, Student filed a motion to dismiss this matter for lack of jurisdiction. Specifically, Student argues that OAH is without jurisdiction to resolve the issue raised in the complaint because the issue is essentially a breach of settlement dispute between the parties. Elk Grove opposed Student's motion on April 22, 2016. Elk Grove generally contends that the issue raised in the complaint does not relate to compliance with a settlement agreement, as asserted by Student; and, therefore OAH is not without jurisdiction to resolve the matter.

APPLICABLE LAW AND DISCUSSION

OAH may hear due process claims arising under the Individuals with Disabilities Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) 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].) However, this limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Wyner, supra*, 223 F.3d at p. 1030.)

Elk Grove's complaint raises an issue, and alleges facts, relating to its right to conduct an assessment of Student without parental consent. In the complaint, Elk Grove alleges that as a result of a January 12, 2016 IEP meeting, the IEP team determined that further assessment of Student was necessary, and sent an assessment plan to Student's advocate on January 22, 2016. Elk Grove further alleges that Parent has failed to provide consent to assess Student pursuant to the January 12, 2016 assessment plan.

Student attaches a copy of a settlement agreement between the parties dated March 16, 2015. Student maintains that the complaint is a request to enforce the settlement agreement, which, Student argues, is outside of OAH's jurisdiction. Indeed, Student is correct that OAH is without jurisdiction to resolve claims alleging a failure to comply with a settlement agreement. However, the complaint does not raise an issue relating to a breach of the March 16, 2015 settlement agreement.

In the March 16, 2015 settlement agreement, Elk Grove agreed to conduct assessments pursuant to a March 17, 2015 assessment plan. In addition, Elk Grove agreed to schedule an IEP team meeting for the purpose of reviewing the assessments conducted pursuant to the March 17, 2015 assessment plan within the 60-day statutory period following Parent's return of the executed assessment plan.

The complaint in this matter does not involve the March 17, 2015 assessment plan that is attached to the settlement agreement. Rather, the assessment plan at issue in the complaint is an entirely different assessment plan. The assessment plan at issue here is dated January 12, 2016, and was allegedly proposed because of concerns raised at a January 12, 2016 IEP meeting. Consequently, the sole issue raised in the complaint is not a request to enforce the March 16, 2015 settlement agreement. Instead, the complaint relates to the purported refusal of Parent to consent to an assessment of Student outside the terms of the settlement agreement. The complaint is properly before OAH, and within its jurisdiction to resolve.

ORDER

Student's motion to dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: May 3, 2016

DocuSigned by:

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings