

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN LEANDRO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016030707

ORDER DENYING MOTION TO
DISMISS ISSUE TWO

On March 11, 2016, San Leandro Unified School District filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Student.

On April 10, 2016, Student filed a Motion to Dismiss Issue Two, alleging that San Leandro has failed to state a claim upon which relief can be granted, and that OAH is not the proper venue and does not have jurisdiction to order involuntary treatment by a district-chosen mental health provider.

On April 14, 2016, San Leandro filed a response, asserting that Student mischaracterizes the relief sought. On April 18, 2016, Student filed a reply.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, 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, San Leandro's Issue Two, though inartfully pled, identifies as an issue for hearing whether its offer of educationally related mental health services as part of its November 18, 2015 individualized education program for Student is necessary to provide Student with a free appropriate public education.¹ Issue Two also identifies a further issue of whether Parent has constructively withdrawn consent to the November 2014 IEP mental health services component by refusing to allow Student to participate in these services. Student's argument that San Leandro is seeking an order for involuntary treatment is not persuasive. Rather, San Leandro seeks an order that it may implement the mental health services offer of Student's November 2015 IEP without Parental consent. In the alternative, San Leandro seeks an order that its proposed service providers are qualified to deliver Student's mental health services such that if Parent refuses to allow Student to participate, San Leandro has fulfilled its obligation to offer and provide mental health services.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Student fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or a motion for summary judgment prior to giving San Leandro the opportunity to develop a factual record at hearing. Here, Student's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

1. Student's Motion to Dismiss Issue Two is denied.

DATE: April 18, 2016

DocuSigned by:

Theresa Ravandi

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THERESA RAVANDI

Administrative Law Judge

Office of Administrative Hearings

¹ Nothing in this Order prevents the Administrative Law Judge at the prehearing conference from clarifying and re-wording the issues consistent with the complaint.