

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TEMPLETON UNIFIED SCHOOL
DISTRICT,

v.

PARENTS on behalf of STUDENT.

OAH CASE NO. 2009050005

ORDER DENYING MOTION TO
DISMISS

On April 29, 2009, attorney Diane Willis, on behalf of the Templeton Unified School District (District), filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against Student.

On May 6, 2009, advocate Anne M. Zachry, on behalf of Student, filed a motion to dismiss the complaint.¹ On May 11, 2009, the District filed an opposition to Student's 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.)

¹ Student also filed a motion for stay put, which will be ruled on in a separate order.

A reassessment requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f); 34 C.F.R. § 300.300(c) (2006).) To obtain consent, a school district must develop and propose a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, §§ 56321, subd. (a) and 56381, subd. (f).) If the parents do not consent to the plan, the district can conduct the reassessment only by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300(c) (2006); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f), 56501, subd. (a)(3).)

DISCUSSION

The dispute in this matter concerns the District's request to conduct a comprehensive triennial assessment of Student. Pursuant to Education Code section 56501, subdivision (a)(3), a district may file a request for a due process hearing to obtain an order to compel a student's assessment without parental consent. Student's motion to dismiss focuses on factual issues in dispute regarding the nature of parents' consent to the District's proposed assessment plan and whether Student is physically capable of being assessed. Therefore, Student's motion to dismiss is denied because Student raises factual issues that need to be decided by a trier of fact regarding whether the District may assess Student without parental consent.

ORDER

Student's Motion to Dismiss is denied.

Dated: May 15, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings