

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MODESTO CITY SCHOOLS,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2009090763

ORDER DENYING MOTION TO
DISMISS

On September 10, 2009, Diana B. Glick, attorney for Student, filed a Due Process Hearing Request¹ (complaint) against Modesto City Schools (Modesto) and Ceres Unified School District (Ceres). On October 7, 2009, Marcy L. Gutierrez, attorney for Modesto, filed a Motion to Dismiss (motion). On October 12, 2009, Student filed an opposition to Modesto's motion.

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

Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, and incorrect parties, OAH will not dismiss claims that have otherwise been properly pleaded.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

DISCUSSION

Modesto's motion seeks to dismiss Student's Issues number 3 and 4, in Student's complaint. Modesto contends that it is not the education agency responsible for the provision of a FAPE to Student during the 2008-2009 and 2009-2010 school years (SY), which is the relevant time period covered by Issues number 3 and 4, respectively.²

Student's Issue number 3 alleges that because Modesto denied Student a FAPE during SY 2008-2009, by offering an inappropriate placement and services, he transferred to a charter school.

Student's Issue number 4 alleges that Modesto should have participated in an IEP team meeting regarding the appropriateness of residential placement for SY 2009-2010. Student's opposition points out that Student disenrolled from the charter school, effective September 8, 2009. The complaint was filed September 10, 2009. Modesto concedes that Student resides within its jurisdictional boundaries.

Therefore, whether Modesto actually had a duty to provide special education services to Student, during the relevant time period, is a factual issue that can only be resolved through the evidence at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing, giving the parties the opportunity to develop a factual record.

ORDER

GOOD CAUSE APPEARING, Modesto's Motion to Dismiss Issues number 3 and 4 is denied. The matter shall proceed as scheduled.

Dated: October 20, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings

² On September 24, 2009, Modesto filed a Notice of Insufficiency (NOI) to Student's complaint. On September 28, 2009, OAH issued an order finding the complaint sufficient. OAH notes that Modesto's instant motion is virtually identical to its NOI, with respect to facts, legal authority and argument.