

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

HUNTINGTON BEACH UNION HIGH  
SCHOOL DISTRICT; FOUNTAIN  
VALLEY UNIFIED SCHOOL DISTRICT;  
ORANGE COUNTY DEPARTMENT OF  
MENTAL HEALTH

OAH CASE NO. 2010031131

ORDER DENYING MOTION TO  
DISMISS

On March 11, 2010, attorney Edwin Egelsee filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student, naming Huntington Beach Union High School District, Fountain Valley Unified School District, and Orange County Department of Mental Health (OCDMH) as respondents. In pertinent part, as it relates to the instant Motion, the complaint alleges that OCDMH's evaluation of Student after an AB 3632 referral was inappropriate and incomplete. The complaint requests that OCDMH be ordered to recommend residential placement for Student.

On March 17, 2010, OCDMH filed a Motion to Dismiss. The Motion argues: (1) at the time the AB 3632 referral was made, Student had not yet been made eligible for special education under the eligibility category "emotional disturbance," and therefore could not be recommended for residential treatment per applicable regulations; and (2) its evaluation of Student took into account all the information it was given or could reasonably access, and was not deficient. The Motion references facts pertaining to the date of the AB 3632 referral, Student's eligibility category at that time, the date Student's eligibility category was changed to ED; OCDMH's unawareness of that change; and the specifics of its evaluation of Student. The Motion attaches a supporting Declaration from the Clinical Psychologist who performed the evaluation.

On March 22, 2010, Huntington Beach Union High School District filed a response to the Motion. On March 23, 2010, Student filed an opposition to the Motion. Among other objections, both dispute OCDMH's version of the relevant facts.

## 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

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, incorrect parties, etc., OAH will not dismiss claims that have otherwise been properly pleaded. OCDMH fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings under federal law, or demurrer from facts on the face of the complaint under Code of Civil Procedure section 430.30, prior to giving the parties the opportunity to develop a factual record at hearing. As a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

OCDMH’s motion also fails as a motion for summary judgment. As in a summary judgment motion, OCDMH presents purportedly undisputed evidentiary facts outside of the pleading to establish that Student’s claim is barred. (Code. Civ. Proc. § 437c). Special education law does not provide for a summary judgment procedure. OCDMH may raise its contentions as an affirmative defense to Student’s allegations. However, the parties must present their evidence at the due process hearing.

In sum, in its Motion to Dismiss, OCDMH seeks a determination of the merits of the complaint. Given the lack of any administrative procedure comparable to a judgment or demurrer on the pleadings, or summary judgment, dismissal based solely on an application of the law to the facts alleged in the Motion is unwarranted. OCDMH’s legal arguments should be made after the hearing, based on the facts developed there, not on the facts alleged in the complaint or upon subsequently developed facts. Accordingly, the Motion is denied.

ORDER

OCDMH's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: March 26, 2010

/s/

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JUNE R. LEHRMAN  
Administrative Law Judge  
Office of Administrative Hearings