

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010040774

ORDER DENYING MOTION TO
DISMISS

On April 26, 2010, Student's mother, an attorney, filed with the Office of Administrative Hearings (OAH), an amended due process hearing request (complaint) naming the Los Angeles School District (District) as the respondent. The complaint alleges that District will not provide Student the testing accommodations set forth in his IEP during the administration of the Advanced Placement (AP) World History test. The complaint further alleges that District failed and refused to seek the accommodations from the College Board. District asserts by way of its Motion, that OAH has no jurisdiction to hear this matter because it involves the College Board and that District would jeopardize the validity of Student's test scores if testing accommodations were permitted. District provided the declaration of its testing administrator in support of its 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) 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.)

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. Here, the Motion 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.

DISCUSSION

Here, the dispute involves a test which is administered as part of a class that is part of Student's educational program and involves the testing accommodations which are allegedly contained in his IEP. Facially, the allegations set forth claims that are within OAH's jurisdiction concerning the educational program and IEP implementation. Although District may have a factual defense or a plausible explanation for the alleged refusal to provide testing accommodations during the AP examination, that would require a factual determination and is therefore not a proper subject of a motion to dismiss.

ORDER

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

IT IS SO ORDERED.

Dated: April 29, 2010

/s/

GLYNDA GOMEZ
Administrative Law Judge
Office of Administrative Hearings