

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011090491

ORDER DENYING MOTION TO
DISMISS ISSUE ONE

On December 26, 2011, the Dry Creek Joint Elementary School District (District) filed a First Amended Due Process Hearing Request (complaint) against Student. On January 20, 2012, Student filed a motion to dismiss, alleging that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear Issue One in the District's complaint for an order to implement the District's November 30, 2011 individualized education program (IEP) without Parent's consent. On January 23, 2012, the District filed an opposition, and Student a response on January 24, 2012.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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.)

Education Code section 56346, subdivision (f), states:

With the exception of a parent of a child who fails to respond pursuant to subdivision (b),¹ or refuses to consent to services pursuant to subdivision (b), if the public agency determines that the proposed special education program component to which the parent does not consent is necessary to provide a free appropriate public education to the child, a due process hearing shall be initiated in accordance with Section 1415(f) of Title 20 of the United States Code. If a due process hearing is held, the hearing decision shall be the final administrative determination and shall be binding upon the parties. While a resolution session, mediation conference, or due process hearing is pending, the child shall remain in his or her current placement, unless the parent and the public agency agree otherwise.

DISCUSSION

In the present matter, the District seeks an order that its November 30, 2011 IEP provides Student with a free appropriate public education and that it may implement its IEP offer without Parent's consent. The factual and legal authority cited by Student failed to establish that Education Code, section 56501, subdivision (a), does not permit a school district to file a due process hearing request regarding whether a particular IEP provides a student with a FAPE and if the school district may implement the IEP without parental consent. (See *Student v. Palo Alto Unified School District* (2011) Cal.Ofc.Admin.Hrngs. Case Nos. 2010070435 and 2011030401.) Student's factual contentions regarding alleged procedural violations are triable issues to be raised at hearing. Accordingly, Student's motion to dismiss Issue One is denied.

ORDER

Student's motion to dismiss Issue One is denied.

Dated: January 30, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ Education Code section 56346, subdivision (b) governs a District's initial offer of services after finding a student initially eligible for special education services.