

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011091060

ORDER DENYING STUDENT'S
MOTION TO DISMISS

On September 29, 2011, the Temecula Valley Unified School District (District) filed a Request for Due Process Hearing (complaint) naming Parents on behalf of Student (Student) as respondents. The complaint contains one issue: "Does the District have the right to assess Student pursuant to the assessment plan dated August 17, 2011, without consent of his parents?" The complaint also alleges that Student is currently attending the New Bridge School, a nonpublic school, after being placed there unilaterally by Parents some time after January 31, 2011. The complaint alleges that Parents had notified the District that they would unilaterally place Student in a nonpublic school and seek reimbursement for the costs of attending the private school because of the District's failure to provide Student with a free appropriate public education (FAPE).

On October 10, 2011, Student filed a notice of representation. Student then filed this motion to dismiss on October 11, 2011. In his motion, Student contends that the Office of Administrative Hearings (OAH) should dismiss the District's complaint as Student is a privately placed student in a nonpublic school. Student's motion failed to contain a declaration from Parents that Student was a privately placed student.

On October 14, 2011, the District filed an opposition to the motion. The District stated that they would not oppose dismissal if Parents filed with OAH a declaration that Student was a privately placed student and Parents were no longer seeking reimbursement. On October 18, 2011, Student filed a reply to District's opposition stating that Parents refuse to waive their right to reimbursement for attending the private school.

APPLICABLE LAW AND DISCUSSION

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.)

Here, Parents are refusing to consent to the District assessing Student which is within the jurisdiction of OAH. Student has failed to produce any evidence that OAH is without jurisdiction because Student has been privately placed in a private school by Parents. Since Parents unilaterally placed Student in a private school reserving the right to seek reimbursement, Student’s reliance on seeking dismissal on the basis that he is a privately placed student is without merit. Accordingly, Student’s motion to dismiss is DENIED.

IT IS SO ORDERED.

Dated: October 19, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings