

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013030894

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO DISMISS

On April 30, 2013, the Fairfield-Suisun Unified School District (District) filed a Motion to Dismiss Issues alleged in Student's request for due process hearing (complaint). On May 3, 2013, Student filed an opposition.

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

Claims for Denial of In-Home Services

The District moves to dismiss three of the four issues alleged in Student's complaint. In his First Issue Student alleges that the District denied him a FAPE when it refused to provide him in-home instruction in January 2012, as recommended by his treating physician. The District alleges in its moving papers that "it is undisputed" that the District offered to assess Student "as early as" November 2011 but Parents did not consent to the assessment

until April 2012, so as a matter of law it had no obligation to Student under the (IDEA in January 2012. However, Student's opposition does dispute that claim, giving rise to a factual conflict about the nature and timing of the District's offer to assess and Parent's alleged refusal to authorize assessment. Since the IDEA as implemented by state law that does not authorize the granting of summary judgment, these competing factual claims can be resolved only at hearing.

The complaint also contains language that may allege a denial of temporary disability services under Education Code section 48206.3, but that section specifically exempts from its coverage any disability for which a student may be eligible for services under California special education law, so OAH has no jurisdiction over such a claim.

The District's motion to dismiss the First Issue is therefore denied insofar as the issue alleges denial of a FAPE, and granted insofar as it alleges denial of services under Education Code section 48206.3.

Claims over Which OAH Has No Jurisdiction

In his Third Issue, Student alleges that the District is retaliating against him and Parents by maintaining proceedings against them before the Student Attendance Review Board (SARB). In his Fourth Issue Student alleges that the District is denying him his rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act, and state civil rights laws. OAH does not have jurisdiction to entertain claims based on those statutes, as Student appears to concede in his opposing papers. The Third and Fourth Issues will therefore be dismissed.

ORDER

1. The District's motion to dismiss the First Issue in Student's complaint is denied insofar as the issue alleges denial of a FAPE, and granted insofar as it alleges denial of services under Education Code section 48206.3.
2. The District's motion to dismiss the Third and Fourth issues in Student's complaint is granted.
3. All previously scheduled dates remain on calendar.

Dated: May 6, 2013

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings

