

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014011021

ORDER DENYING MOTION TO
DISMISS

On January 29, 2014, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Val Verde Unified School District (Val Verde).

On February 10, 2014, Val Verde filed a motion to dismiss Student's complaint on the ground that the issue raised in Student's complaint is "not yet ripe for adjudication". On February 12, 2014, Student filed his opposition to Val Verde's motion to dismiss.

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 . . . the provision of a FAPE to a child; the refusal

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

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 the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Finally, 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.

DISCUSSION

Student's complaint alleges that Val Verde denied her Parent's request for an independent educational evaluation in the area of functional behavior analysis in violation of her rights under the IDEA. The issue raised by Student is within the matters identified in the IDEA for which Student may file a request for a due process hearing, and over which OAH jurisdiction has.

Val Verde has not argued that Student's issue is facially outside of OAH's jurisdiction, but rather that Student's case is without merit as certain facts put forth by Student in support of the complaint are incorrect and/or not persuasive. Essentially, Val Verde is asserting that it has a good defense against Student's complaint because it disputes the factual basis for Student's claim. The proper avenue for resolving factual disputes is in a hearing rather than through a motion to dismiss. Accordingly, District's motion to dismiss Student's complaint is denied.

ORDER

1. District's motion to dismiss is denied.
2. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: February 21, 2014

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings