

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

OAK PARK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010021041

ORDER DENYING MOTION TO
DISMISS

On February 22, 2010, Parents filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student, naming district as the respondent.

On March 4, 2010, attorney Adam Newman filed on behalf of District a motion to dismiss two of the issues stated in the complaint, on the grounds that OAH lacks jurisdiction over these two issues. On March 10, 2010, Parents filed an opposition to the motion to dismiss. On March 12, 2010, District filed a reply

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

In the present matter, issue no. 2 in the complaint alleges that Student's case worker has repeatedly ridiculed, mocked and harassed Student, who is gay, including calling him by a girl's name. Student's issue no. 5 alleges that his case worker/ resource teacher is completing Student's assignments for him, thereby failing to follow his IEP.

District's Motion argues that both of these issues are outside OAH jurisdiction. In its reply, District argues that Parents may address these concerns through other available grievance mechanisms, including the District's "Uniform Complaint Procedures."

Parents' opposition clarifies that the "case worker" alleged in issue no. 2 is Student's special education teacher, and argues that this was the person who was assigned to provide FAPE to Student. With respect to issue no. 5, the opposition reiterates that completing Student's work for him is not in compliance with his IEP and deprives him of FAPE.

In application of the authority cited above, Parents have presented a complaint regarding matters involving the provision of a FAPE to a child, and these matters are within the jurisdiction of OAH. The motion to dismiss is therefore denied.

ORDER

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

IT IS SO ORDERED.

Dated: March 15, 2010

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings