

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SAN MATEO UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011080087

ORDER DENYING MOTION TO
DISMISS

On August 2, 2011, the San Mateo Union High School District (District) filed a Due Process Hearing Request (complaint) against Student. On September 7, 2011, Student filed a motion to dismiss, alleging that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear the District's complaint for an order to implement the District's December 14, 2010 individualized education program (IEP) without Parent's consent. On September 12, 2011, the District filed an opposition.

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.)

DISCUSSION

In the present matter, the District seeks an order that its December 14, 2010 IEP provides Student with a free appropriate public education and that it may implement its IEP offer without Parent's consent. Student provides no factual or legal authority 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.) Accordingly, Student's motion to dismiss is denied.

ORDER

Student's motion to dismiss is denied.

Dated: September 13, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings