

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CLOVIS UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013090883

ORDER DENYING MOTION TO
DISMISS

On September 24, 2013, the Clovis Unified School District filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) naming Parents on behalf of Student (Student) as respondent.

On October 7, 2013, Student filed a motion to dismiss the complaint on grounds that OAH lacks jurisdiction to hear the matter. On October 14, 2013, the District filed an opposition to the motion.

Factual Background

Student's parents have not given full approval to an IEP since April 2010. Parents have objected to placement of Student in the District's Functional Life Skills program (FLS). In July 2012, Student filed a due process request (OAH Case No. 2012070992) against the District contending that the District had failed to provide Student a free appropriate public education (FAPE) for school years 2010-2011 and 2011-2012. On August 9, 2012, the District filed a due process request (OAH Case No. 2012080216) with OAH seeking a ruling that the April 16, 2012 as amended was appropriate. Both cases were dismissed pursuant to a settlement.

On November 14, 2012, Student filed a due process request (OAH Case No. 2012110503) contending that the District had failed to provide Student a FAPE for school year 2012-2013. OAH, by ALJ Troy Taira, conducted an eight day hearing commencing on January 23, 2013. On April 5, 2013, OAH issued a decision finding for the District on all issues.

Student's IEP team convened on April 19, 2013, and then reconvened on April 25 and May 13, 2013. Parents objected to the proposed IEP as amended.

On July 5, 2013, Student filed an action with the United States District Court for the Eastern District of California seeking to reverse the April 5, 2013 OAH decision.

On August 27, 2013, the District filed the instant complaint seeking an order from OAH declaring the April 19, 2013 IEP as amended (hereafter referred to as the “April 19, 2013 IEP”) was appropriate and may be implemented.

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.)

A district is required to continue developing IEP’s for a disabled child even when a preceding IEP is under administrative or judicial review. (*Parent v. Fallbrook Union High School District* (OAH Case No. 2011050794, March 14, 2012) at pp. 6-7.) In *Amann v. Stow School System* (1st Cir. 1992) 982 F.2d 644, 651, fn. 4, the First Circuit noted that the local education agency has the duty to maintain and update a pupil’s IEP during the pendency of the review. (See also *M.M. v. School District of Greenville* (4th Cir. 2002) 303 F.3d 523, 536.)

Student cites as authority *Porter v. Manhattan Beach Unified School District* (9th Cir. 2002) 307 F.3d 1064). In *Porter*, the issue was whether parents should be required to exhaust their claim to enforce an order issued by the Special Education Hearing Office (SEHO, the predecessor to OAH) which the school district refused to implement. The *Porter* court acknowledged a prior decision by the Ninth Circuit that SEHO lacked jurisdiction to enforce its own orders. *Porter* is not on point to the instant matter.

Here, the issue is whether the April 19, 2013 IEP constitutes a FAPE. As indicated above, the District is obligated to continue developing IEP’s during the judicial review process. Because this matter involves educational placement and services, OAH has jurisdiction to determine the appropriateness of any IEP developed during the pendency of judicial review. Thus, Student’s motion is denied.

ORDER

1. Student's motion to dismiss the complaint is DENIED.
2. The matter will proceed as scheduled.

IT IS SO ORDERED.

Dated: October 14, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings