

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT

v.

APPLE VALLEY UNIFIED SCHOOL
DISTRICT AND SAN BERNARDINO
COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH CASE NO. 2014010869

ORDER DENYING MOTION TO
DISMISS

On January 27, 2014 Student filed a Due Process Hearing Request (complaint) naming Apple Valley Unified School District (District) and San Bernardino County Superintendent of Schools (SBCSS) as respondents. On January 28, 2014, the respondents filed a Motion to Dismiss. The Motion sought to dismiss Student’s request for an expedited hearing. The request for an expedited hearing was based on Student’s allegations that Student is not attending school because her mother has taken Student out of school for safety reasons. The Motion also sought to dismiss the entire complaint for “failure to state a claim” against either respondent, by failing to delineate with sufficient specificity which factual allegations relate to each of them. As discussed below, the Motion is denied.

Motion to Dismiss Expedited Hearing

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).)

Here, the Motion correctly argues that the complaint contains no allegations concerning either a manifestation determination or a “decision by a school district regarding a change in educational placement.” Thus, no expedited hearing was required. However, because OAH looks to the allegations of the complaint in determining whether a matter is expedited, OAH has never scheduled an expedited hearing in this matter, nor treated it as such. Having never been set as an expedited hearing, or treated as one by OAH, there is nothing to dismiss. Therefore, the Motion to Dismiss on this ground is denied.

Motion to Dismiss for Failure to State a Claim

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 under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a motion to dismiss for “failure to state a claim” procedure. Both respondents are sufficiently alleged to have been public agencies involved in decisions regarding Student, who provided special education or related services to her, and thus within OAH jurisdiction. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

Apple Valley Unified School District’s and San Bernardino County Superintendent of Schools’ Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: January 31, 2014

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings