

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

IRVINE UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2015050902

ORDER DENYING MOTION TO  
DISMISS

On May 26, 2015, Irvine Unified School District filed a Request for Due Process Hearing (complaint), naming Student as respondent.

On July 23, 2015, Student filed a Motion to Dismiss. District filed no opposition to Student's motion.

For the reasons set forth below, Student's Motion to Dismiss is denied.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" 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 Office of Administrative hearings has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029.) Although OAH has granted 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. . . . , OAH will not dismiss claims that have otherwise been properly pleaded.

## DISCUSSION

District's complaint alleges that Student is 22 years old and that Parent retains the right to make educational decisions on behalf of Student. District alleges it has been unable to conduct Student's triennial assessments pursuant to March 2014 and December 2014 assessment plans due to a lack of parental consent. District seeks a ruling regarding the timeliness of its proposed assessments, whether Parent's refusal to consent to the assessments relieved District of its obligation to provide a FAPE to Student since March 2014, and whether District can assess Student without parental consent.

Student contends that she has consented to the assessments on multiple occasions, and that District should not be relieved of its obligation to provide a FAPE or be permitted to assess Student. Student argues that District failed to timely assess Student before she aged out of special education in June 2015, by employing various delay tactics, and by failing to implement the terms of the assessment plans agreed upon at the individualized education program team meetings. Student's opposition details a factual chronology of events spanning a period of approximately 18 months, attempting to explain several pages of attached exhibits.

Student's motion is the equivalent of a motion for summary judgment based on whether factual allegations can be demonstrated and how the law applies. Student fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH, special education law does not provide for a summary judgment procedure. Here, the Motion to Dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: August 04, 2015

/s/

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LAURIE GORSLINE  
Administrative Law Judge  
Office of Administrative Hearings