BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ANAHEIM UNION HIGH SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2019030675 ORDER GRANTING REQUEST FOR RECONSIDERATION AND DENYING MOTION TO DISMISS

On March 27, 2019, the undersigned administrative law judge issued an order granting Anaheim Union High School District's request to consolidate its case with the Student-filed request for due process (OAH Case Number 2019021085) and denying Student's request to dismiss Anaheim's case. On March 29, 2019, Student filed a motion for reconsideration of the order denying her motion to dismiss. On March 29, 2019, Anaheim filed an opposition to the request for reconsideration. On April 2, 2019, Student dismissed her request for a due process hearing.

APPLICABLE LAW

Reconsideration

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

Dismissal

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 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

Student alleges new facts and law in support of the request for reconsideration. Accordingly, Student's request for reconsideration is granted. On reconsideration, Student has failed to present any legal authority that would allow OAH to dismiss Anaheim's case without affording it the opportunity to proceed to a full evidentiary hearing.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, special education law does not provide for a summary judgment procedure, which would require a ruling on the merits of the complaint, prior to an evidentiary hearing. Here, Student's motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. OAH has jurisdiction over Anaheim's two claims. As such, Anaheim is entitled to present evidence in support of its claims at the due process hearing. Student failed to provide any legal authority that would require OAH to hear and determine the equivalent of a motion for summary judgment without first affording Anaheim the opportunity to develop a factual record at hearing.[1] Accordingly, the motion to dismiss is denied.

ORDER

1. Student's motion for reconsideration is granted.

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[1] Nothing in this Order prevents Student from asserting as a defense at hearing that she did not request independent educational evaluations, or from formally withdrawing what Anaheim has determined to be a March 13, 2019 request for independent evaluations.

2. Based on reconsideration of Student's motion to dismiss, Student's motion to dismiss Anaheim's case is denied.

DATE: April 2, 2019

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Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings