BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: BELLFLOWER UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018120367 ORDER DENYING STUDENT'S MOTION TO DISMISS

On December 11, 2018, Bellflower Unified School District filed with the Office of Administrative Hearings a Due Process Hearing Request (complaint) naming Student. Bellflower's complaint alleged it offered Student an individualized education program on February 12, 2018 that would provide Student a free appropriate public education. The complaint alleges Parents: refused to consent to the IEP; refused to attend any of three subsequent IEP team meetings scheduled by Bellflower to resolve Parent's refusal to consent to the IEP; withdrew Student from Bellflower; and, as of the complaint, were home-schooling Student. Bellflower sought a ruling from the Office of Administrative Hearings that Bellflower's February 12, 2018 IEP offered Student a FAPE, and Parents obstructed Bellflower from implementing Student's February 21, 2018 IEP.

On December 20, 2018, Student filed a motion to dismiss Bellflower's complaint. Student's motion argued that Student's February 12, 2018 IEP was his initial IEP, and moved to dismiss Bellflower's complaint on grounds that OAH had no jurisdiction to hear Bellflower's complaint because state and federal law bar a school district from filing a request for due process hearing where Parents have not consented to an initial IEP. (Citing Ed. Code, § 56346, subd. (b); 34 C.F.R. § 300.300(b)(3) (2006)[1]).

The Education Code, United States Code, and Code of Federal Regulations require a school district to seek to obtain informed consent from the parent of a child before providing special education and related services to the child. (Ed. Code, § 56346, subd. (a); 20 U.S.C. §§ 1414(a)(1)(D)(i)(II); 34 C.F.R. § 300.300(b)(1) and (2).) If the parent fails or refuses to consent to the initiation of services, the district is barred from requesting either: (i) mediation to obtain the parent's agreement; or (ii) a due process hearing to obtain a ruling, that the district may provide special education and related services to the child. (Ed. Code, §§ 56346, subd. (b), and 56506, subd. (e); 20 U.S.C. §§ 1414(a)(1)(D)(ii)(II), and 1415(b); 34 C.F.R. § 300.300(b)(3).)

1 All subsequent references to the Code of Federal Regulations are to the 2006 version.

On December 21, 2018, Bellflower filed an opposition to Student's motion to dismiss on two grounds. First, Bellflower contends that the above provisions of the Education Code, United States Code, and Code of Federal Regulations do not apply to bar Bellflower's complaint in this matter, because Bellflower is not seeking an agreement or ruling that Bellflower may provide special education and related services to Student. Second, Bellflower contends the provisions do not apply where, as allegedly is the case here, the parents consented to portions of an initial IEP, while not consenting to other provisions. (See *E.N. v. Los Angeles Unified School Dist.* (9th Cir. 2015) 805 F.3d 1164, 1168, [20 U.S.C. §§ 1414(a)(1)(D)(ii)(II)] does not apply where parent consented to special education and related services, but did not consent to a specific component of the initial IEP.)

Student's motion and Bellflower's opposition are based upon disputed material facts. Bellflower's complaint alleged Parents on February 28, 2018 consented to Student's eligibility for special education under the category of Other Health Impairment, and to implementation of the goals, behavior intervention plan, accommodations and counseling services offered in Student's initial IEP. Bellflower further alleged Parents: (i) refused to permit Student's IEP team to reconvene to discuss possible amendments to Student's IEP; (ii) gave Bellflower notice on November 9, 2018 that Parents intended to privately place Student and seek reimbursement from Bellflower on grounds that Bellflower's offer of placement and services did not constitute an offer of FAPE for Student; and (3) withdrew Student from school in Bellflower on December 6, 2018. Student's motion alleges the February 12, 2018 IEP was Student's initial IEP, and Bellflower's opposition alleges Student consented to some, but not all, of the provisions of the February 12, 2018 IEP.

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.)

OAH will grant 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.) However, special education law does not provide for a summary judgment procedure.

Here, Student and Bellflower raise factual issues, including whether Bellflower's claims arising from Student's February 12, 2018 concern an initial IEP, and whether Parents failed or refused to consent to the initiation of services for Student. The factual issues presented by the parties require an evidentiary hearing.

ORDER

Student's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: December 28, 2018

DocuSigned by:

ROBERT G. MARTIN
Administrative Law Judge
Office of Administrative Hearings