BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

WILLIAM S. HART UNION HIGH SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2019100944

ORDER DENYING STUDENT'S MOTION TO DISMISS COMPLAINT

On October 23, 2019, William S. Hart Union High School District filed a Due Process Hearing Request, referred to as a complaint, with the Office of Administrative Hearings, naming Parents on behalf of Student. The Office of Administrative Hearings is referred to as OAH. On October 29, 2019, Student filed a motion to dismiss with OAH. On November 4, 2019, William S. Hart filed an opposition.

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", known as 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].) Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction such as, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure.

William S. Hart's complaint seeks a determination it may assess Student as part of his triennial independent education plan due in March 2020 without Parents' consent. (Ed. Code, § 56501, subd. (a)(3).) Parent argues in her motion to dismiss she is under no legal obligation to allow Student to be assessed prior to his scheduled triennial individual education program meeting. This dispute falls within the provisions of the Individuals with Disabilities Education Act and OAH has jurisdiction over this issue.

Parent further contends that Student's father should be dismissed on the basis he lacks educational rights over Student. Whether a parent has educational rights on behalf of a student requires a finding of fact. OAH cannot make a factual determination regarding Parents' educational rights without an evidentiary hearing.

Student's 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 to dismiss is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DocuSigned by:
Jennifer Kelly
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DATED: November 05, 2019

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings