BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

HUENEME ELEMENTARY SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NUMBER 2023030299

ORDER DENYING STUDENT'S MOTION TO DISMISS

MAY 9, 2023

On March 9, 2023, Hueneme Elementary School District, called Hueneme, filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Parent on behalf of Student. The Office of Administrative Hearings is referred to as OAH.

Hueneme's complaint seeks an order allowing it to complete a comprehensive assessment of Student pursuant to its assessment plan dated May 2, 2022. The complaint alleges Student re-enrolled in the district on March 3, 2022, and has not been comprehensively assessed since 2018.

The complaint alleges Parent consented to the May 2, 2022 assessment plan and provided it to Hueneme on August 22, 2022, but has not made Student available for

assessment. Hueneme asserts it has made diligent efforts to assess Student but has been unable to do so. Hueneme seeks an order requiring Parent to make Student reasonably available to Hueneme's assessors at Hueneme's district office or Student's school site.

On May 3, 2023, Student filed a motion to dismiss the complaint. Student's motion to dismiss alleges, among other things, that Parent is willing to make Student available to Hueneme's assessors at a neutral site other than Hueneme's district office or school sites, such as a public library. Student's motion to dismiss requests an order dismissing Hueneme's complaint prior to a due process hearing, and an order requiring Hueneme's assessor to conduct Student's assessments in a neutral setting.

On May 4, 2023, Hueneme filed an opposition to Student's motion to dismiss. Hueneme argues Student's motion to dismiss seeks a ruling on the merits and is equivalent to a summary judgment motion. Hueneme argues special education law does not permit summary judgment motions, and further that it is entitled to a hearing on the merits on the issue of its right to assess Student.

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 free appropriate public education 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].) OAH's jurisdiction is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Hueneme's complaint identifies one issue for hearing. Hueneme seeks a determination that Parent must make Student reasonably available to Hueneme's assessors at its school district office or Student's school site, for completion of the assessments pursuant to the signed May 2, 2022 assessment plan. This dispute falls within the provisions of the Individuals with Disabilities Education Act and OAH has jurisdiction over this issue.

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. Student's motion to dismiss is not limited to matters that are facially outside of OAH's jurisdiction, but instead seeks a ruling on the merits. An evidentiary hearing is required to determine Hueneme's right to assess Student. Accordingly, Student's motion to dismiss is denied.

ORDER

1. Student's motion to dismiss is denied.

2. All dates shall proceed as currently scheduled.

IT IS SO ORDERED.

Jennifer Kelly

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings