BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: UPLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018120181 ORDER DENYING MOTION TO DISMISS

On December 5, 2018, Upland Unified School District filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Parents on Behalf of Student. This matter is pending hearing beginning December 27, 2018.

On December 10, 2018, Student filed a Motion to Dismiss Upland's complaint. Attached to Student's motion is an October 9, 2018 letter from Parent to Pioneer Junior High School; an unverified copy of an October 3, 2018 individualized education program for Student to which Parent signed consent with exception on October 9, 2018; and a May 3, 2018 letter from Kaiser Permanente regarding Student's diagnosis of attention deficit hyperactivity disorder. Student's proof of service indicates he served a copy of his motion on Upland's Director of Special Education rather than Upland's counsel.[1]

On December 12, 2018, Upland filed an opposition to Student's motion to dismiss supported by a sworn declaration from its counsel. On December 14, 2018, Student filed a declaration under penalty of perjury by Parent in support of his motion to dismiss. On December 18, 2018, Student filed a response to Upland's opposition. Student's response is accompanied by a proof of service showing that Student provided a copy, as required, to Upland's counsel.

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

[1] Student is advised that all filings with OAH must be served on Upland's counsel and accompanied by a proof of service establishing such service.

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

In the present matter, Upland's sole issue for hearing is whether it may assess Student pursuant to its March 2018 assessment plan without Parent's consent. Student requests that OAH dismiss this matter because Upland assessed him in January 2017, and he is not due for a triennial assessment until May 2020; and that Student has a medical diagnosis of attention deficit hyperactivity disorder. Upland contends that it has the right to request a due process hearing to override Parent's refusal to consent to its assessment plan by establishing at hearing that its proposed assessments are warranted.

OAH has jurisdiction over Upland's complaint. 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. 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 Upland the opportunity to develop a factual record at hearing. Accordingly, the motion is denied.

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ORDER

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

IT IS SO ORDERED.

DATE: December 19, 2018

DocuSigned by:
Theresa Ravandi
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THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings