

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

REDLANDS UNIFIED SCHOOL
DISTRICT AND EAST VALLEY SELPA,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013020401

ORDER DENYING MOTION TO
DISMISS

On February 18, 2013, Student filed a motion to dismiss (Motion). On February 15, 2013, Redlands Unified School District (District) and West Valley Special Education Local Plan Area (SELPA) filed an opposition.¹

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (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.)

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions

¹ The Motion was originally filed on February 12, 2013 as part of Student’s response to the Due Process Complaint. The same Motion was then filed by Student on February 18, 2013 as a separate document, as required by OAH.

regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

DISCUSSION

In the present matter, the District originally filed a due process complaint naming Student on December 18, 2012 regarding an occupational therapy (OT) independent educational assessment (IEE) requested by the parents and the appropriateness of the District’s OT assessment. The District withdrew its complaint on February 8, 2013. The District re-filed essentially the same complaint on February 11, 2013. Student filed this Motion alleging that the second complaint should be dismissed because (a) it is a duplicate request from the withdrawn complaint which essentially functioned as an attempt to unilaterally continue the hearing. (b) it denies Student her right to a hearing within 45 days of filing and to a speedy resolution, and (c) it was not filed in a reasonable time.

In this case, Student cites no legal authority under which her Motion can be granted. District has filed a complaint regarding the assessment of a student and this falls within the jurisdiction of OAH. While Student’s allegations regarding the purpose of the withdrawal and the re-filing of the complaint may have some merit, there is no bar in the IDEA to withdrawing and re-filing a complaint. As Student has supplied no legal support for her Motion, the Motion is denied.

ORDER

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

IT IS SO ORDERED.

Dated: February 20, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings