

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090251

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On September 04, 2013, Student filed a Request for Due Process Hearing (Complaint), naming Val Verde Unified School District (District) as the respondent.

On September 27, 2013, District filed a Response to Complaint and a Notice of Insufficiency (NOI). The NOI raised the same issues addressed in this Motion. On October 1, 2013, the Office of Administrative Hearings (OAH) found the NOI was not timely and deemed the complaint sufficient, noting that the ruling did not affect District's ability to file a motion to dismiss issues not within OAH jurisdiction.

On October 2, 2013, District filed a Motion to Dismiss Issues for Lack of OAH Jurisdiction (Motion), alleging that OAH lacks jurisdiction over any issue presented in Student's complaint. On October 7, 2013, Student filed a response.

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" (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, 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.)

Although OAH will grant motions to dismiss allegations that are facially outside of the OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. There is no administrative procedure which permits OAH to hear and determine the equivalent of a judgment on the pleadings under federal law, or demurrer from facts on the face of the complaint under Code of Civil Procedure section 430.30, prior to giving the parties the opportunity to develop a factual record at hearing. As a general matter, sufficiently pleaded due process hearing requests should proceed to hearing. The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.¹

DISCUSSION

District contends OAH has no jurisdiction over any issue in the complaint for the following reasons: issues one, two and three involve a private custody dispute between parents, Student's issues four and six relating to educational records must be addressed in another forum, and Student's issue five involves allegations of child abuse.

Student contends that all the issues in the complaint come within OAH jurisdiction because all issues relate to procedural rights under the IDEA, parent participation, proper assessment of Student, the conduct of Student's IEP team meeting and the content of his IEP, and the failure to provide prior written notice when required.

The complaint alleges six problems. In brief, issues one through four, and six, boil down to whether Parent was denied meaningful participation in the decision making process and whether District failed to properly assess Student. Issue five concerns whether Student was assessed in all areas of suspected disability and whether Student's behaviors and academic program were being adequately addressed. Various specific instances are alleged to describe when, where, and how the problems occurred.

Each of Student's six issues set forth detailed factual allegations followed by proposed resolutions. Some of the facts alleged may be extraneous, not all of the facts alleged may turn out to be relevant and not all of the resolutions proposed may turn out to be appropriate. However, the IDEA does not require perfect, artful, legalistic pleading. The facts alleged in Student's complaint are sufficient to put District on notice of alleged procedural and substantive IDEA claims over which OAH has jurisdiction.

¹ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. District fails to point to any authority that would require a determination of the merits based on the allegations in the complaint. Given the lack of any administrative procedure comparable to a judgment or demurrer on the pleadings, or summary judgment, dismissal based solely on the facts alleged in the complaint is unwarranted. Accordingly, the Motion is denied.

ORDER

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

IT IS SO ORDERED.

Dated: October 11, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings