

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

COMMUNITY SCHOOL FOR CREATIVE
EDUCATION,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2014040515

ORDER DENYING MOTION TO
DISMISS

On April 09, 2014, Community School for Creative Education filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming Parents (Parents) on behalf of Student (Student) as respondents. Community School alleges Parents consented to only parts of Student's 2013 Individualized Education Program (IEP) and refused to consent to the offered academic and counseling services to address Student's needs in these areas. The complaint seeks an order determining that Student's current IEP provides a free appropriate education (FAPE) and permitting Community School to implement Student's current IEP in its entirety. The matter is currently set for hearing on June 24, 25, and 26, 2014.

On May 22, 2014, Student filed a Motion to Dismiss. Student contends the complaint should be dismissed because the 2013 IEP expired and Parents are in the process of finalizing a new IEP. Student argues that proceeding forward with a hearing at this time is a waste of resources. Student claims her Parents are withdrawing her from school on June 12, 2014 and Student will no longer be enrolled.

Community School filed no opposition to the Motion to Dismiss.

APPLICABLE LAW AND DISCUSSION

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].) Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc., OAH will not dismiss claims that have otherwise been properly pleaded.

Here, Student has offered no proper basis for granting a motion to dismiss. Student argues the issues re based on an expired IEP and that such claims will be moot by the time of the due process hearing because Parents intend to remove Student from the school. However, Student fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary judgment prior to giving a petitioner the opportunity to develop a factual record at hearing. Accordingly, the motion to dismiss is denied because it seeks a ruling on the merits without development of a factual record. The prehearing conference and hearing dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: June 04, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings