

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014051090

ORDER DENYING MOTION TO
DISMISS

On May 20, 2014, Student filed a due process hearing request. On June 17, 2014, the Irvine Unified School District (Irvine) filed a motion to dismiss Student's complaint alleging that Student's sole issue for hearing is a disagreement over its promotion and retention policy and is, therefore, beyond the Office of Administrative Hearings' jurisdiction.¹ On June 20, 2014, the parties submitted a stipulated motion for an extension of time for Student to respond to Irvine's motion to dismiss. The request was granted, and Student was given until June 23, 2014, to respond to Irvine's motion. Student did not respond.

APPLICABLE LAW

Parents have 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 [FAPE] to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction over Individuals with Disabilities Education Act (IDEA) claims. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

¹ On June 5, 2014, OAH granted Irvine's motion to dismiss portions of Student's complaint alleging that Irvine violated Student's Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)) rights, Americans with Disabilities Act (42 U.S.C. 12101 et seq. (ADA)) rights, and civil rights under title 42 of the United States Code section 1983 (Section 1983).

DISCUSSION

Student's sole remaining issue is that from November 2012 forward, Irvine violated the IDEA by failing to offer appropriate special education services, in particular by failing to consider Student's weight, size, and functional levels in advancing him to a middle school campus. Irvine argues that Student's issue is merely a promotion and retention issue governed by Education Code section 48070 and not a special education issue arising under the IDEA.

Student's complaint does not merely challenge the individualized education program (IEP) team's decision to promote him to middle school. Rather, the complaint alleges a denial of FAPE under the IDEA, "by failing to offer appropriate special education services...." Student further asserts that he, "has a significant medical history that has impacted him in all areas of his development," and his complaint contends that this issue is properly before OAH because the challenge to the IEP, "is based on [Student's] disabilities, which include the impact his health problems have and continue to have on his physical well-being and functional performances across all areas of function [*sic*]."

The pleading requirements under the IDEA should be liberally construed in light of the broad remedial purposes of the act and the relative informality of the due process hearings it authorizes.² By analogy, the entire complaint should be liberally construed in determining whether or not allegations fall under the IDEA. In this case that includes considering Student's alleged denial of FAPE related to placement based not solely on Irvine's promotion and retention policies but upon Student's unique medical needs.

A prehearing conference (PHC) is currently scheduled in this matter. During the PHC, the issues will be clarified with the parties. Only those allegations arising specifically under the IDEA will be subject to the due process hearing in this case.

ORDER

1. Motion to Dismiss is denied as Student's complaint asserts claims arising under the IDEA.

² *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.].

2. All dates currently scheduled will remain on calendar.

IT IS SO ORDERED.

DATE: June 30, 2014

/s/

JOY REDMON
Administrative Law Judge
Office of Administrative Hearings