

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060467

ORDER DENYING MOTION TO
DISMISS

On May 28, 2015, Parents on behalf of Student filed a Request for Due Process Hearing (complaint), naming Riverside Unified School District as the respondent.

On June 23, 2015, District filed a Motion to Dismiss, alleging that the Office of Administrative Hearing lacked jurisdiction to decide the due process hearing request because the matter concerned a service plan for a child unilaterally placed in a private school by Parent.

OAH received no response to District's Motion to Dismiss from Student.

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 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.)

The IDEA requires states to provide some measure of special education and related services to disabled children in private schools, including parochial schools, see 20 U.S.C.A.

§ 1412(a)(10)(A)(i)(I); see also 34 C.F.R. § 300.130.133(a)(1) (2006).¹ District was required to assess Student and to provide Student with a service plan. (34 C.F.R. §§ 300.131(c) & 132(b); Ed. Code §§ 56171, 56173.) "States are required to provide to children voluntarily enrolled in private schools only those services that can be purchased with a proportionate amount of the federal funds received under the program . . . [The] statute does not require a school district to provide on-site services to a disabled child who is voluntarily enrolled in private school." (*KDM V. Reedsport School Dist.* (9th Cir. 1999) 196 F.3d 1046, 1049 reh'g. en banc den. April 25, 2000, cert. den., 2000 U.S. LEXIS 7794 (citing *Fowler v. Unified Sch. Dist. No. 259*, (10th Cir. 1997) 128 F.3d 1431, 1436-37; See also 34 C.F.R. § 300.137 (a) (1).)

The school district makes the final decision with respect to services to be provided to eligible parentally placed private school children with disabilities. (34 C.F.R. § 137 (b) (2).) When the school district has offered them a free appropriate public education and their parents elect to enroll them in a private school, such disabled private school children have no individual entitlement to special education and related services from the public educational agency. A school district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school if it made an offer of FAPE available to the pupil and parents elected to place the child in the private school. (Ed. Code, § 56174, 20 U.S.C. § 1412(a)(10)(C)(i); see *Foley v. Special School District of St. Louis County* (8th Cir. 1998) 153 F.3d 863, 864; *K.R. v. Anderson Community School Corporation* (7th Cir. 1997) 125 F.3d 1017, 1019, cert. denied, 118 S.Ct. 1360 (1998).)

A dispute regarding a service plan that provides equitable services to a parentally placed private school child is properly the subject of state complaint procedures. (34 C.F.R. § 300.140(c).) Such a dispute is not governed by the due process provisions that apply with regard to disagreements regarding the identification, evaluation, or educational placement of a child, or the provision of a free appropriate public education to such child. (34 C.F.R. § 300.140(a).) Accordingly, the Office of Administrative Hearing does not have the authority to hear and decide cases in which a parent raises a dispute regarding the equitable services set forth in a service plan for a parentally-placed private school child. (Ed. Code, § 56501, subd. (a); *Wyner, supra*) 223 F.3d at pp. 1028-1029.)

DISCUSSION

In the present matter, District contends that Parents have unilaterally placed Student into a private school and thus has waived all rights to special education and related services under the IDEA. It contends the offer made to parents is a service plan, and that any issues

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

arising in connection with such plans are outside the purview of the Office of Administrative Hearing.

District asserts that it held individualized educational program planning meetings to Student on September 19, 2014, and November 20, 2014, on the understanding that the services would be offered to student at a public school within the district. It was only after the November 20, 2014, meeting that Parents informed District that student would continue to attend a private school. As a result, District states, it held an Individual Services Plan meeting “immediately following the meeting” and offered student a service plan. No specific date is given for the meeting and no evidence of a written service plan is included with District’s Motion to Dismiss.

In distinction to that, Student’s 47-page due process hearing request includes the IEP plan report dated September 19, 2014. On page 10 of the report it is written “11/20/2014- The team met to discuss [Student’s] eligibility and the offer of FAPE. Mother reported that [Student] will not be attending Alcott Elementary or another school in RUSD... Strategies and interventions were offered as suggestions to both [Parent] and Harvest Christian School Representatives....” There is no report of the offer of a service plan or an Individual Services Plan meeting.

Parent signed the individualized educational program document and initialed her consent to the contents and implementation of the individualized educational program on November 20, 2014. The entirety of services offered to Student, who is eligible for special education because of Autism, is 50 weekly minutes of Speech and language services. Nowhere in the report is Student’s placement discussed.

In Student’s due process hearing request, Student reports that Parents were contacted on February 2, 2015, and asked to sign a “Service Plan.” Parents declined to sign.

In application of the authority cited above, District has failed to show that Student was covered at all relevant times by a service plan which would remove this matter from the jurisdiction of the Office of Administrative Hearing. The argument presented by District is not fully compatible with the documentary evidence submitted by Parents with their due process hearing request. While a dispute over services to be provided to Student under a service plan while attending a parentally-placed private school would be properly resolved in a state complaint procedure, significant factual uncertainties prevent the necessary finding that the placement was unilateral. It is clear from the report of the September 19, 2014, individualized educational program meeting that District knew that student was attending a private school and there appears to be no offer of a public placement therein.

Further, there is a significant factual dispute over whether an individualized educational program plan was in effect at least between November 20, 2014, and February 2, 2015. Jurisdiction exists to consider the provision of FAPE under such a plan. While neither side has presented proof on this matter, Parents have submitted an executed plan agreement dated November 20, 2014. In addition, District was on notice of Parents’ claim in their due

process request that no service plan was offered prior to February 2, 2015. District has claimed, without specifics, that such a plan was offered “immediately” but has not addressed Parents’ contrary assertion. Further, the individualized educational program plan document prepared by District does not support its argument, as the notes reflect only a discussion of strategies and interventions. On that basis, it cannot be found that District has carried its burden of persuasion on this motion.

ORDER

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

IT IS SO ORDERED.

DATE: July 3, 2015

/s/

CHRIS BUTCHKO
Administrative Law Judge
Office of Administrative Hearings