

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ODYSSEY CHARTER SCHOOL,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022010223

ORDER DENYING MOTION TO DISMISS FOR

LACK OF JURISDICTION

JANUARY 27, 2022

On January 7, 2022, Odyssey Charter School filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Parents on behalf of Student. The Office of Administrative Hearings is referred to as OAH.

On January 24, 2022, Student filed a Motion to Dismiss, alleging OAH lacks jurisdiction to adjudicate the issues alleged in the complaint. On January 26, 2022, Odyssey filed an opposition.

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 free appropriate public education 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 School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

A school district may request a due process hearing to authorize a change of placement if the district believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(A) and (B)(ii)(II); 34 C.F.R. § 300.532(b)(ii).)

DISCUSSION

Odyssey alleges three issues in its complaint. Issues one and two seek to place Student in an appropriate interim alternative educational setting, without Parents’ consent, based upon Student’s conduct. Issue three seeks to implement an October 19,

2021 individualized education program, without Parents' consent. Student's motion fails to explain why OAH lacks jurisdiction over these issues, especially as the IDEA and implementing regulations permit Odyssey Charter School's action.

Based upon the above statutes, these issues fall squarely within OAH's jurisdiction to resolve these claims. Accordingly, Student's motion is denied.

ORDER

1. Student's Motion to Dismiss is denied. The expedited and non-expedited matters shall proceed as scheduled.

IT IS SO ORDERED.


Paul H. Kamoroff (Jan 31, 2022 10:53 PST)

Paul H Kamoroff
Administrative Law Judge
Office of Administrative Hearings