

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022010495

ORDER DENYING MOTION TO DISMISS FOR LACK OF
JURISDICTION

FEBRUARY 2, 2022

On January 19, 2022, Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Montebello Unified School District. On January 27, 2022, Montebello filed a Motion to Dismiss Issue One of the complaint. Montebello argues OAH does not have jurisdiction to decide Issue One because it is not yet ripe to proceed to a hearing. Student did not file a response to Montebello's motion.

Pursuant to the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), a parent of a child with a disability 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.)

Issue One of the complaint alleged Montebello denied Student a free appropriate public education when it failed to find Student eligible for special education under the category of other health impairment after reviewing a May 29, 2021 independent psychoeducational evaluation. Montebello argues this issue is premature for hearing because in a November 15, 2021 individualized education program, Parent agreed to wait 90 days before considering whether Student should be eligible under other health impairment, and that time period has not yet expired.

While OAH will dismiss issues that are facially outside of its jurisdiction, special education law does not allow for a summary judgement procedure. Here, there is a factual dispute as to whether Montebello should have identified Student under the category of other health impairment. The substance of this issue is within OAH’s

jurisdiction. OAH cannot determine whether this issue is ripe without first holding an evidentiary hearing. Therefore, Montebello's Motion to Dismiss Issue One is denied.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings