

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

BURBANK UNIFIED SCHOOL DISTRICT.  
OAH CASE NUMBER 2024120930

ORDER DENYING MOTION TO DISMISS FOR LACK OF  
JURISDICTION

JANUARY 13, 2025

On December 24, 2024, Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, naming Burbank Unified School District, called Burbank. The Office of Administrative Hearings is called OAH.

On January 3, 2025, Burbank filed a Notice of Insufficiency as to Student's complaint. OAH found Student's complaint sufficient on January 6, 2025.

On January 8, 2025, Burbank filed a Motion to Dismiss, alleging OAH lacks jurisdiction to adjudicate the issues alleged in the complaint. On January 13, 2025, Student filed a response in opposition to Burbank's motion.

## APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called the IDEA, 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.)

## DISCUSSION

Student alleges a sole issue regarding the implementation of Student’s one-to-one aide service. Student asserts that his aide has been changed several times, without notice or parental input. Burbank asserts that Student’s complaint does not relate to a denial of a free appropriate public education, called a FAPE. Burbank also asserts that the staffing changes at the heart of Student’s complaint are within Burbank’s discretion and do not implicate the IDEA or related California law.

Student alleges that Burbank changed his one-to-one aide without notice or parental input. Student also challenges how Burbank implemented his one-to-one aide, such that the changes in one-to-one aide negatively affected Student's educational progress. These alleged changes relate to the provision of a FAPE and a change of Student's placement. (Cal. Code Regs. Tit. 5, § 3042, subd. (a) [defining placement to include personnel].) Student's complaint raises claims within OAH's limited jurisdiction. Moreover, Student's complaint raises a mixed issue of law and fact which cannot be determined through a Motion to Dismiss. (See 20 U.S.C. § 1415(f)(3)(E)(i).) Accordingly, Burbank's Motion to Dismiss is denied.

Nothing about this Order prevents Burbank from raising the affirmative defenses it raised in its Motion at the due process hearing.

## ORDER

1. Burbank's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.

IT IS SO ORDERED.

*Ashok Pathi*

Ashok Pathi

Administrative Law Judge

Office of Administrative Hearings