BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ANAHEIM ELEMENTARY SCHOOL DISTRICT.

OAH CASE NUMBER 2020120264

ORDER GRANTING MOTION TO DISMISS

MARCH 4, 2021

Student filed a complaint with the Office of Administrative Hearings, called OAH, on December 7, 2020, naming Anaheim Elementary School District. In December 2020, OAH issued a decision in OAH Case # 2020090678, involving the same parties, granting Anaheim Elementary the right to assess Student for special education eligibility without parental consent if Parent wanted Student to receive special education services from Anaheim Elementary. Student was not eligible for special education at the time. On February 22, 2021, Anaheim Elementary filed a motion to dismiss Student's complaint in the instant matter.

OAH held a prehearing conference on March 1, 2021. No one appeared for Student. Anaheim Elementary's attorney appeared on Anaheim Elementary's behalf.

The Administrative Law Judge, called ALJ, denied Anaheim Elementary's motion to dismiss without prejudice. The ALJ ordered that Anaheim Elementary may refile the motion if accompanied by evidence that Anaheim Elementary provided written notice to Parent regarding the consequences of Parent withdrawing consent for special education eligibility assessments. The ALJ ordered that Student may file a response to the amended motion to dismiss no later than 2 business days after Anaheim Elementary filed its new motion. OAH served the prehearing conference order on the parties on the same date.

Anaheim Elementary filed an amended motion to dismiss the complaint in the instant matter on March 1, 2021, supported by evidence and declarations. Student did not file a response.

Anaheim Elementary asserted in its motion that on or about February 19, 2021, Parent withdrew, in writing, consent for special education assessments to determine Student's initial eligibility, and all requests for any special education services for Student, unless Anaheim Elementary met Parent's conditions. On March 1, 2021, Anaheim Elementary provided Parent with written notice and a copy of Procedural Rights explaining the consequences of withdrawing consent for eligibility assessments and special education services.

The December 2020 OAH Decision and Order permitted Anaheim Elementary to assess Student for initial eligibility for special education services without parental consent. At the time of the December 2020 OAH Decision and afterward, Student has not been found eligible for special education services. The Decision ordered Parent to cooperate with Anaheim Elementary by making Student available for assessments to help determine if Student was eligible for special education services.

Parent's February 19, 2021 withdrawal of Parental request for any special education services under the Individuals with Disabilities Education Act communicated Parent's decision that Parent no longer wanted special education services for Student.

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

Student's complaint alleges four issues, all of which involve Student's right to a free appropriate public education, and Parent's right to participate in the process of developing Student's individualized education program, called IEP, under the IDEA. Parent's February 19, 2021 withdrawal of consent for special education assessments and services under the IDEA if an IEP team finds Student eligible,

renders Student's complaint moot as to any issue arising under the IDEA. As such OAH has no jurisdiction to hear or consider Student's issues.

Anaheim Elementary's motion to dismiss Student's complaint in its entirety is granted as no triable facts exist because Parent has withdrawn any request for Student to receive special education services. Accordingly, Student's complaint is dismissed. All dates, including the order to show cause hearing, are vacated.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings