BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018021017
v.	ORDER PARTIALLY GRANTING AND PARTIALLY DENYING DISTRICT'S MOTION TO DISMISS AND DENYING MOTION TO UNEXPEDITE
SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	

On February 24, 2018, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming San Dieguito Union High School District. On February 28, 2018, San Dieguito filed a Motion to Dismiss Issues One, Three and Four of Student's Complaint and to Unexpedite Issues Two and Three. Student timely filed an opposition to the motions.

In its motion to dismiss, District asserts that issues one, three and four are outside the jurisdiction of the Office of Administrative Hearings (OAH) because they relate to expulsion proceedings and a non-disabled student's general education services. District further alleges that issue two and three are inappropriate for an expedited hearing.

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.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements,

incorrect parties, etc…..), special education law does not provide for a summary judgment procedure.

DISCUSSION

Motion to Dismiss

Here, District conflates Student's proposed resolutions in the complaint with Student's issues. San Dieguito did not file a notice of insufficiency in this matter, so the complaint is deemed sufficient by operation of law. Student is self-represented and the narrative complaint, although unartfully drafted, raises questions of fact that are not facially outside OAH's jurisdiction. Specifically, student asserts he is a 10th grader at Canyon Crest Academy High School. He is not currently eligible for special education, but alleges that a request was made for a special education assessment to determine eligibility. Student specifically requests a stay of the expulsion proceedings as a proposed remedy. San Deguito correctly asserts OAH lacks jurisdiction over the general education expulsion process. However, Student alleges facts supporting a claim that he is entitled to the protections of the IDEA as San Deguito was on notice he was a child with a suspected disability. To the extent that the complaint raises this issue, it is within OAH's jurisdiction and properly subject to the expedited hearing procedures.

Student's request to change the expulsion proceeding to OAH for adjudication is outside OAH's jurisdiction. Expulsion decisions are made by either the Superintendent of Schools for the District where student attends school, the Superintendent's designate, or the Principal of the school Student attends. (Ed. Code §48915.) Thus, this issue is dismissed as outside OAH's jurisdiction[1].

Motion to Unexpedite

San Dieguito requests what it defines as Student's Issue No. 2, regarding "IEP assessment," and that San Dieguito, "should have provided an IEP assessment consistent with the Child Find mandate," be unexpedited. This matter was scheduled as a dual hearing because facts supporting both expedited and non-expedited issues were alleged in Student's complaint. Greater specificity regarding the issues will be addressed in Student's prehearing conference statement and during the prehearing conference. San Dieguito's motion to unexpedite Issue 2 is denied because it has not been established that this issue is part of the expedited due process hearing. The specific issues to be addressed in the expedited hearing process and those to be addressed in the non-expedited hearing process will be addressed during the prehearing conference in this matter.

ORDER

1. District's motion to dismiss Student's issues related to the disciplinary procedures underlying his expulsion is DENIED.

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[1] This request is not interpreted as a motion for change of venue to OAH San Dieguito for the special education due process hearing.

2. District's motion to dismiss Student's request to remove the expulsion proceedings to OAH for adjudication is GRANTED.

3. District motion to unexpedite what it defines as Student's Issues Two and Three is DENIED, subject to further issue clarification during the prehearing conference.

4. Student is ordered to identify *by number* in his prehearing conference statement the issues raised in the complaint.

5. Nothing in this order precludes San Dieguito from renewing its motion to dismiss issues listed in Student's prehearing conference order based on lack of OAH's jurisdiction.

   The Administrative Law Judge presiding over the prehearing conference will determine which issues are expedited and non-expedited and include them in the Order following the prehearing conference.

DATE: March 1, 2018

DocuSigned by:
Cynthia Fritz
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CYNTHIA FRITZ
Administrative Law Judge
Office of Administrative Hearings