BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:

PARENT ON BEHALF OF STUDENT,

and

ENTERPRISE ELEMENTARY SCHOOL DISTRICT,

OAH CASE NUMBER 2021040393

OAH CASE NUMBER 2021020664

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS ISSUES FOR LACK OF JURISDICTION

JUNE 14, 2021

On May 12, 2021, Student filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Enterprise Elementary School District as respondent. The Office or Administrative Hearings is referred to as OAH.

On June 8, 2021, Enterprise filed a motion to dismiss alleging OAH lacks jurisdiction to adjudicate certain issues alleged in the complaint. On June 11, 2021, Student filed an opposition to Enterprise's motion to dismiss.

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.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

Both Student and Enterprise have amended their respective complaints in this consolidated case. Any reference in this order to a party's complaint or issue refers to

the most recent, amended iterations. District's motion to dismiss asserts that Issues One, Three, and Seven in Student's complaint be dismissed as being outside OAH's jurisdiction.

Issue One asks whether Enterprise is denying due process to Parents by filing a frivolous due process complaint against Student, requiring Parents to hire an attorney to address and defend against "that unreasonable claim." Enterprise argues that since Issue One seeks redress for a violation of Parents' due process rights and not that of Student, Issue One does not concern the identification, evaluation, educational placement of, or provision of FAPE to Student, and should be dismissed.

Student's Issue One, as stated, does not specify to which of Enterprise's two claims it refers, but the body of Student's Issue One does: Enterprise's request to unconditionally and unilaterally implement its February 24, 2020 IEP. In essence, Student's Issue One asserts that Enterprise's February 24, 2020 IEP is an initial FAPE offer, and Enterprise's effort to enforce it violates federal law and Parents' due process rights.

The IDEA is replete with provisions that protect parental due process rights and treats parents as an extension of their child with a disability. The distinction that Enterprise draws between Parents' and Student's due process rights is unpersuasive. Whether Enterprise's effort to enforce its February 24, 2020 IEP is without merit is a matter to be litigated at hearing. Student's Issue One concerns the provision of FAPE to Student. Enterprise's motion to dismiss Student's Issue One is denied. To the extent that Student's Issue One alludes to tortious conduct, OAH does not have jurisdiction over such a claim.

Issue Three asks for a finding that Parents provided Enterprise with the information it requested from Student's medical experts. Enterprise asserts that Issue Three does not concern the identification, evaluation, educational placement of, or provision of FAPE to Student, and should be dismissed.

Student's medical records were placed squarely at issue by Enterprise's Issue Two, which asks that Enterprise be able to conduct a health and medical assessment of Student without conditions on Enterprise's ability to communicate with Student's doctors. Student's assertion that Parents' cooperation with Enterprise's medical information requests concerns Enterprise's Issue Two and the evaluation of Student. Enterprise's motion to dismiss Student's Issue Three is denied.

Issue Seven asks "whether [Enterprise's] denial of FAPE for [Student] and its pursuit of a frivolous claim against [Student] and Parents violated [Student's] rights under Section 504, the Americans with Disabilities Act, and state civil rights laws to access an education as do his non-disabled peers." Student's complaint states that Issue Seven is to satisfy an exhaustion requirement under federal law. OAH does not have jurisdiction to resolve Issue Seven. Accordingly, Issue Seven is dismissed.

ORDER

Enterprise's motion to dismiss is granted as to Student's Issue Seven. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Claire Yazigi

Claire Yazigi
Administrative Law Judge
Office of Administrative Hearings