BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
TRACY UNIFIED SCHOOL DISTRICT,	OAH Case No. 2017010024
v.	ORDER DENYING STUDENT'S MOTION TO DISMISS
PARENT ON BEHALF OF STUDENT.	

On December 27, 2016, District filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Student.

On March 24, 2017, Student filed a Motion to Dismiss District's complaint. Student contends that: (1) OAH lacks jurisdiction to hear the complaint because District failed to comply with Student's request for records; (2) District's failure to produce records is prejudicial and denies Student's ability to have a full and fair hearing; and (3) requiring Student to proceed to hearing without records is a deprivation of Student's rights to effective representation and examination of witnesses.

On March 28, 2017, District filed an opposition to the motion. On March 29, 2017, Student filed a response to District's opposition.

The due process hearing is scheduled to begin on April 5, 2017.

APPLICABLE LAW

Pursuant to the procedural safeguards set forth in the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), parents of a child with a disability shall have the opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child. (34 C.F.R. §300.501(a)(1); see Ed. Code, § 56504.) Parents also have the right to receive copies of education records. (Ed. Code, § 56504.) The public agency shall comply with a request for school records without unnecessary delay before any individualized education program meeting, resolution session, or due process hearing and in no case more than five business days after the request is made, orally or in writing. (*Ibid*.)

A hearing officer may order a local educational agency to comply with IDEA procedural requirements. (20 U.S.C. § 1415(f)(3)(E)(iii); 34 C.F.R. § 300.513(a)(3); Ed. Code, § 56505, subd. (f)(4).)

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, which would require a ruling on the merits of the complaint, prior to an evidentiary hearing.

DISCUSSION

Student contends that District failed to comply with his January 20, 2017 request for education records. Student acknowledges receipt of some records but contends that some documents were inaccurate, missing, and/or incomplete. Student identified the documents he contends are missing in his motion.

District contends that there is no legal authority for dismissing a complaint based upon an alleged failure to provide student records and that some of the records Student requested will be produced as evidence for the hearing.

Student does not contend that District's complaint is facially outside of OAH jurisdiction. Instead, Student seeks relief for District's alleged failure to comply with a request for records, arguing that it interferes with Student's ability to effectively participate in the due process hearing.

There is no legal authority for dismissing a complaint based upon an alleged failure to provide student records. Therefore, Student's Motion to Dismiss is denied. The matter shall proceed as scheduled. However, this ruling is without prejudice to Student seeking other forms of relief.

IT IS SO ORDERED.

DATE: March 30, 2017

DocuSigned by:
Tara Doss
0D223C0D8032412...

TARA DOSS
Administrative Law Judge
Office of Administrative Hearings