BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

UPLAND UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019101198

ORDER DENYING NOTICE OF INSUFFICIENCY OF COMPLAINT

On October 30, 2019, Parents on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Upland Unified School District. The Office of Administrative Hearings is referred to as OAH.

On November 14, 2019, Upland filed a Motion to Dismiss, Or in the Alternative, Notice of Insufficiency. OAH will only address Upland's Notice of Insufficiency as Upland needs to file a separate 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 free

appropriate public education is referred to as FAPE. 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.)

A school district is not required to pay for the cost of special education and related services of a child with a disability at a private school if the district made a free appropriate public education available to the child and the parent elected to place the child in the private school. (34 C.F.R. § 300.137; Ed. Code, §§ 56170, 56174.5.) No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. (34 C.F.R. § 300.137(a); Ed. Code, § 56174.) Students parentally-placed in private schools have the opportunity to receive equitable services funded with Part B funds allocated by the school district to its population of parentally-placed private school students. (34 C.F.R. § 300.132(a), § 300.137; Ed. Code, § 56173.) OAH does not have jurisdiction to adjudicate claims related to a student's receipt of equitable services through an individual service plan. (34 C.F.R. § 300.140.)

DISCUSSION

Student alleges he was first evaluated for special education services by Upland on May 27, 2016. Student started school in the Upland's Step Up Preschool program in the fall of 2016. Parents subsequently removed from Student from Upland and placed him in a private, parochial school because Upland failed to address Student's negative behaviors. The complaint is unclear when Student was placed in private parochial school and alleges both calendar years 2016 and 2017.

Student claims he was denied a FAPE for the 2017-2018 school years because Upland failed to hold an annual individualized education program, known as an IEP, and assess Student in all areas of suspected disability. He further alleges he was denied a FAPE following the IEP team meeting held on May 30, 2019 because Upland removed occupational therapy services and failed to provide Student with speech and language services and specialized academic instruction. Student alleges sufficient facts to put Upland on notice that Student contends that Upland was legally obligated to make an offer of FAPE, assess Student in all areas of suspected disability and that its IEP offer of May 30, 2010 did not provide Student with a FAPE. Upland's contention that it was not obligated to provide Student with a FAPE as Student was a parentally placed private school student is a factual issue for hearing as Student's complaint alleges otherwise.

ORDER

1. Upland's Motion to Determine Insufficiency of Complaint is denied. Matter shall proceed as presently scheduled.

IT IS SO ORDERED.

DocuSigned by:
Jennifer Kelly
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DATED: November 15, 2019

Jennifer Kelly
Administrative Law Judge
Office of Administrative Hearings