BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: ANAHEIM ELEMENTARY SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2019031068 ORDER DENYING OBJECTION TO DISTRICT FILING AND MOTION TO DISMISS

On March 26, 2019, Anaheim Elementary School District filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Parents on behalf of Student.

On March 29, 2019, Parents filed an Objection to District Filing for OAH Hearing and Motion to Dismiss, arguing that Student is aged 4 years old, is not required to comply with Education Code Section 48200, and therefore should not be assessed for special needs. OAH received no response from Anaheim.

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.)

Each person between the ages of six and 18 years, not exempted under the provisions of the Education Code, is subject to compulsory full-time education. (Ed. Code, § 48200.) Children between the ages of three to five years, inclusive, and identified by the local

educational agency pursuant to Education Code section 56441.11, can be defined as "Individuals with exceptional needs" if they meet all the criteria set forth in Education Code section 56026. Education Code sections 56441.11(b)(1)(A)-(N) establish the criteria necessary for pre-school students to be assessed by the local educational agency for special needs. Education Code section 56300 provides that a local educational agency "shall actively and systematically seek out all individuals with exceptional needs, from birth to 21 years of age, who reside in the school district…."

DISCUSSION

Anaheim identified Student as a child with exceptional needs and filed a request for due process hearing with OAH in 2017 for the right to assess Student. Student's father stipulated that he did not want special education related services for Student from Anaheim, and when Parents decided to seek services from Anaheim he would agree to the assessments. Anaheim dismissed the matter.

The complaint alleges Father informed Anaheim that he was requesting a special education assessment for Student on January 9, 2019. On January 15, 2019, Father signed Anaheim's assessment plan, but refused to sign a consent to release information for Anaheim to communicate with the Orange County Health Care Agency. The proposed assessment plan included all areas of disability, and were determined based upon Student's diagnosis of autism. At Parents' request, the location of the assessment was changed. Parents have not made Student available for assessments. Anaheim seeks an order from OAH that it be permitted to complete the assessments and that Parents make Student available for assessments. Parents contend that Student is under the age of five years at the present time, that he need not be compulsorily enrolled with Anaheim until the age of six years, and that Parents have the legal right to determine when and where Student will be assessed.

As noted above, children between the ages of three to five years can be defined as "Individuals with exceptional needs" if they meet all the criteria set forth in Education Code section 56026, and Education Code sections 56441.11(b)(1)(A)-(N). Since Anaheim's complaint pleads facts that it has identified Student in compliance with Education Code section 56300, and that Father consented to the assessment plan in January 2019, there are sufficient factual allegations to be determined at hearing as to whether Anaheim may assess Student without Parents' consent. Student's objection to Anaheim's complaint is overruled.

ORDER

Student's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: April 05, 2019

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BRIAN H. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings