BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: CAPISTRANO UNIFIED SCHOOL DISTRICT, Petitioner, v. STUDENT, Respondent	OAH CASE NO. N2006080389 **ORDER DENYING MOTION TO DISMISS**

On August 14, 2006, the Office of Administrative Hearings (OAH) received a due process complaint notice (Complaint) from attorney Carolyn Zuk on behalf of Petitioner Capistrano Unified School District (District), naming Student as the Respondent. The Complaint identified the issue for hearing as whether the District's May 2005 assessment of Student's speech and language development was appropriate.

On August 10, 2006, OAH received a response to the Complaint and a motion to dismiss the case from advocate Jillian Bonnington on behalf of Student. Student argues that the District may not pursue this matter in due process because the Student has already filed a compliance complaint on this issue with the California Department of Education (CDE).

APPLICABLE LAW

California Education Code section 56501, subdivision (a) provides that a parent or public education agency may request a due process hearing when there is a proposal or a refusal to initiate or change the identification, assessment, educational placement or the provision of a free appropriate public education (FAPE) to their child, or when there is a disagreement regarding the availability of a program available for the child. Pursuant to this provision, a public education agency may initiate a due process hearing to show that its assessment is appropriate. (Ed. Code § 56329, subd. (c).)

In addition to due process hearing procedures, each state educational agency shall adopt written procedures for resolving complaints of individuals and organizations regarding special education programs. (34 C.F.R. § 300.660(a) (1997); 34 C.F.R. § 300.151(a) (2006).)[1] As part of complaint investigations, a state educational agency must perform an investigation, if necessary; allow for the opportunity to submit additional information regarding the allegations in the complaint; review all relevant information and make a determination as to whether the public agency is violating the Individuals with Disabilities Education Act (IDEA); and issue a written decision that addresses each allegation in the complaint. (34 C.F.R. § 300.661(a) (1997); 34 C.F.R. § 300.152(a) (2006).) The state educational agency must complete this investigation and issue the written decision within sixty days of the filing of the complaint, unless exceptional circumstances exist which warrant an extension. (*Id.*)

If a complaint is also the subject of a due process hearing, or contains issues which are part of that hearing, the state educational agency must set aside any part of the complaint being addressed in the hearing until the hearing is concluded. (34 C.F.R. § 300.661(c)(1) (1997); 34 C.F.R. § 300.152(c)(1) (2006).) If an issue raised in a compliance complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue. (34 C.F.R. § 300.661(c)(2) (1997); 34 C.F.R. § 300.152(c)(2) (2006).)

DISCUSSION

The District's hearing issue is within OAH's jurisdiction for due process hearings. The existence of a compliance complaint filed with CDE does not constitute a basis for dismissal of a due process hearing complaint on the same issue. Indeed, pursuant to the Code of Federal Regulations, title 34, section 300.661(c)(1), CDE must set aside any part of the compliance complaint that is being addressed in the due process hearing, until conclusion of the hearing. Hence, there is no ground for dismissal of the District's due process Complaint.

ORDER

The motion to dismiss this case is denied.

Dated: August 28, 2006

SUZANNE B. BROWN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings

[1] Although issued on August 14, 2006, the 2006 Final Regulations to the Individuals with Disabilities in Education Improvement Act of 2004 do not take effect until October 13, 2006. However, for informational purposes, this order cites both the 1997 and 2006 versions of the Final Regulations.