

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LOS ANGELES UNIFIED SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011100795

ORDER DENYING MOTION TO
DISMISS

On October 24, 2011, Los Angeles Unified School District (District) filed a due process request (complaint) with the Office of Administrative Hearings (OAH) against Parents on behalf of Student (District complaint). OAH issued a scheduling order, setting mediation for November 8, 2011, a prehearing conference (PHC) for November 14, 2011, and due process hearing for November 17, 2011. Parents did not appear at the November 8, 2011 mediation. Parents also did not appear at the November 14, 2011 PHC, during which District requested a short continuance because it required three days of hearing. The matter was continued, scheduling a PHC for November 28, 2011, and the due process hearing for December 6, 7, and 8, 2011.

On November 22, 2011, attorney Andrew M. Bratt filed a notice of representation of Parents on behalf of Student. Mr. Bratt concurrently filed a motion to continue the due process because he was “pursuing a new career” effective the following Monday, November 28, 2011, asserting that Parents needed time to find new counsel. On November 22, 2011, OAH granted the request to continue the PHC, only, to November 30, 2011.

Mother appeared on behalf of Student at the November 30, 2011, PHC and asked that the PHC and hearing be continued to allow her time to obtain new counsel, stating that she had already scheduled an appointment with a new attorney. For this reason only, OAH granted Mother’s request, scheduling a PHC for January 9, 2012, and due process hearing for January 17, 18 and 19, 2012. As reflected in the Order issued after PHC, Mother stated she understood that no further continuances would be granted because Student was without counsel. Mother further acknowledged that, should she not timely obtain counsel, she must communicate with the District’s counsel as the PHC and hearing dates approach.

On Friday, January 6, 2012, attorney William P. Morrow filed a Notice of Representation on behalf of Student. On Monday morning, January 9, 2012, Mr. Morrow filed a Motion for Continuance on behalf of Student, asserting various reasons for the continuance. On the afternoon of January 9, 2012, Mr. Morrow appeared at the PHC for the Student and argued the continuance motion. District opposed, noting that it filed in October 2011, and was entitled to a timely determination. Student’s motion to continue was granted solely because newly retained counsel required an opportunity to prepare for hearing. The

newly scheduled dates were March 7, 2012 for the PHC, and March 13, 14, 15, and 19, 2012 for the hearing.

On February 21, 2012, Student filed a Request for Due Process against District (Student's Complaint). Student also filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction. On February 27, 2012, District filed opposition to the motion to dismiss.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), 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.)

If the parent of the child fails to respond or refuses to consent to the initiation of special education services, the local educational agency (LEA) shall not provide special education and related services by utilizing the due process procedures in Section 1415 of Title 20 of the United States Code or the procedures in Education Code, section 56506(e), in order to obtain agreement or a ruling that the services may be provided to the child. (Ed. Code, § 56346, subd. (b).)

Education Code section 56346, subdivision (f), provides in part that an LEA shall initiate a due process hearing if the LEA determines that the proposed special education component to which the parent does not consent is necessary to provide a FAPE to the child.

DISCUSSION

Student contends that OAH is without jurisdiction to rule upon District's complaint for two reasons. First, Student asserts that Education Code, section 56346, subdivision (b),

provides that District is without authority to file a due process because Student's parents have refused to accept the District's offer to initiate placement and special education services. Such an assertion is, quite simply, inexplicable. District's complaint states that Student has been eligible for special education and related services, under the category of deafness (DEA), due to bilateral severe-profound sensori-neural hearing loss, since the 2007-2008 school year. The Student's IEPs include parents' agreement to accept some related services and a settlement as a result of informal dispute resolution following the April 2010 IEP.

Therefore, the District's complaint does not concern the initiation of special education but, instead, concerns a dispute regarding placement and related services for Student, whose Parents have participated in IEPs, agreements, informal resolution, and settlement over the past four and a half years. Subdivision (b) simply does not apply to students who are already eligible, whose parents have accepted services, and whom the school district still has an obligation to provide a FAPE.

Student also asserts that District is without authority to file a due process request because there is not a proposal to initiate or change the educational placement of the Student or the provision of FAPE for Student. Student states that the District's offer of FAPE at the May 2011 IEP is the same as the prior April 2010 IEP offer. Therefore, Student reasons that there is no proposal to change Student's placement or services.

Student's assertion is nonsense. The District offered placement and services for Student, which are different than his present placement and services. Parents disagree. State and Federal law provide due process procedures for the very purpose of addressing such a dispute.

Finally, the purported rationale behind the motion to dismiss is undermined by Student's concurrently filed complaint, wherein Student asserts there is a dispute which entitles him to a due process determination.

ORDER

Student's Motion to Dismiss is denied.

Dated: February 27, 2012

/s/

CLIFFORD H WOOSLEY
Administrative Law Judge
Office of Administrative Hearings