

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

POWAY UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2013050525

ORDER DENYING STUDENT'S
MOTION TO DISMISS

PROCEDURAL BACKGROUND

On May 14, 2013, the Poway Unified School District (District) filed a Request for Due Process Hearing (complaint), naming Student as the respondent. In essence, the District's complaint asks the Office of Administrative Hearings (OAH) to find that the District's last offer to Student of an individualized education program (IEP), barring the few provisions of that offer to which Student's parents have given their consent, constitutes a free appropriate public education under applicable federal and state law. The District's offer was made on February 25, 2013, after several IEP team meetings convened over the course of four months.

On May 16, 2013, Student filed a motion to dismiss the District's complaint. Student contends that the District's complaint is untimely because it was filed more than 75 days after the District made its offer of an IEP to Student on February 25, 2013. Student also contends that the District's filing of the instant complaint is solely for purposes of halting a pending compliance complaint filed by Student with the California Department of Education (CDE) addressing issues identical to those raised by the District in its due process complaint. Student points out that CDE's investigation of his compliance complaint will discontinue during the pendency of the District's due process complaint. Student moves for dismissal of the District's complaint so that the CDE investigation may proceed.

Alternatively, Student requests that mediation sessions be waived in this case and that the hearing be set no later than June 10, 2013. Student contends that a hearing on the District's complaint must be set within 25 days of the filing of the complaint.

The District filed an opposition to Student's motion to dismiss on May 16, 2013.

APPLICABLE LAW

Timeliness of the District's Complaint

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].)

In this case, Student contends that the District’s complaint is untimely because it was filed more than 75 days after the District made its IEP offer to Student. Student does not cite any basis for this contention and it is therefore unclear which statute or regulation Student believes supports his argument.

In California, the statute of limitations for filing due process claims is two years, which is consistent with federal law. (Ed. Code, § 56505, subd. (I); see also 20 U.S.C. § 1415(f)(3)(C).) While there are circumstances in which the two-year statute of limitations may be increased, there is no statutory or regulatory basis for decreasing the two years. In this case, the District filed its complaint less than three months after it made its offer of an IEP to Student, well within the two years permitted under California law. The District’s complaint was timely filed. Student’s motion to dismiss based on the timing of the District’s complaint is denied.

Effect of the District's Complaint on Student's CDE Compliance Complaint

Student is correct that the District’s filing of its complaint will halt CDE’s investigation of Student’s compliance complaint until the due process proceedings are concluded. (34 C.F.R. § 300.152(c).) Student believes that this is unfair because it means that his compliance complaint will be superseded by the District’s due process complaint.

The halting of CDE's investigation is based upon federal regulation. The federal government, by enacting this regulation, determined that due process proceedings would take precedence over state compliance proceedings. While Student may believe this procedure to be unjust, there is simply no basis for OAH to dismiss a due process complaint so that a state compliance proceeding may continue. For these reasons, Student's motion to dismiss based upon the pendency his compliance complaint is also denied.

Mediation and Hearing Dates

Student requests that no mediation sessions be scheduled in this case. Mediation in due process proceedings is voluntary. (34 C.F.R. § 300.506(b)(1)(i).) Therefore, if Student does not wish to participate in mediation all he must do is inform OAH of that fact at the time that OAH contacts the parties to confirm the mediation presently scheduled for May 29, 2013.

Student also requests that this case be set for hearing no later than June 10, 2013, because Student contends that hearings must be set within 25 days of the filing of a complaint by a District.

There is no statute that specifically addresses when OAH must set non-expedited cases for hearing. The only requirement in a non-expedited matter is that a decision on a due process complaint must be made no later than 45 days after the expiration of the 30-day resolution period applicable to cases filed by a student or a student's parents, or 45 days after a school district files its complaint, barring the grant of a request for continuance. The shorter period applies to complaints filed by school districts because there is no mandatory resolution session required in those cases. (34 C.F.R. §§ 300.510 and 500.515(a).) In this case, OAH has set the hearing in this matter for June 14, 2013, well within the 45 days permitted for the filing of a decision.

ORDER

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

Dated: May 16, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings