

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH Case No. 2014030842

v.

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

SPENCER VALLEY ELEMENTARY
SCHOOL DISTRICT,

OAH Case No. 2014030046

v.

PARENTS ON BEHALF OF STUDENT.

ORDER DENYING STUDENT'S
MOTION TO DISMISS

The Spencer Valley Elementary School District (Spencer Valley) filed a Request for Due Process Hearing (complaint) on March 3, 2014, naming Student as the respondent. The first issue raised by Spencer Valley is: (1) whether its October 25, 2013 individualized education program (IEP) offered Student a free appropriate public education (FAPE) in the least restrictive environment?

Spencer Valley raised seven other issues, all of which ask, in essence, whether it denied Student a FAPE by:

- (2) Failing to timely complete a triennial evaluation?
- (3) Failing to have a written IEP in place at any time since Student enrolled in April 2013 to the end of the 2012-2013 school year?
- (4) Failing to have an IEP on the first day of the 2013-2014 school year?
- (5) Failing to complete the Draft IEP started on May 28, 2013?
- (6) Implementing goals identified as from an October 2013 IEP to which parental consent had not been obtained?

(7) Failing to implement behavior support and adapted physical education services?

(8) Refusing to schedule an IEP team meeting in response to Parents' request?

On March 10, 2014, Student filed a motion to dismiss issues two through eight of Spencer Valley's complaint. Student contends that the issues raised by Spencer Valley are merely requests for declaratory judgment and, as such are not properly brought before OAH. Student also contends that the complaint is solely for purposes of halting pending compliance complaints filed by Student with the California Department of Education (CDE) addressing issues identical to those raised by Spencer Valley in its due process complaint. Student points out that CDE's investigation of his compliance complaint will discontinue during the pendency of Spencer Valley's due process complaint. Student moves for dismissal of Spencer Valley's complaint so that the CDE investigation may proceed.

Spencer Valley filed an opposition to Student's motion to dismiss on March 13, 2014. Student filed a reply to the opposition on March 17, 2014.¹

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.)

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].)

DISCUSSION

¹ Student filed his request for due process on March 21, 2014. On April 1, 2014, OAH granted Student's unopposed motion to consolidate his case with that of Spencer Valley.

On its face, Spencer Valley's due process request raises issues within OAH's jurisdiction. The complaint seeks an order regarding Spencer Valley's responsibility for Student's education during a particular time period and specifically asks if actions taken or failed to be taken by Spencer Valley denied Student a FAPE. While the seven issues contested by Student are basically procedural in nature, a school district is obligated to comply with federal and state special education law on both procedural and substantive grounds. (see, *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690].) All seven allegations raise issues concerning whether Spencer Valley procedurally provided a FAPE to Student. All seven allegations are therefore properly before OAH.

With regard to his pending CDE compliance complaints, Student is correct that Spencer Valley's filing of its due process requests will halt CDE's investigation of the compliance complaints 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 complaints will be superseded by Spencer Valley'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 complaints is also denied.

IT IS SO ORDERED.

DATE: April 4, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings