

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009010817

ORDER DENYING MOTION TO
DISMISS

On January 29, 2009, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a request for a due process hearing (complaint) naming the Fairfield Suisun Unified School District (District). On February 6, 2009, Andrew Green-Ownby, Director of Special Education, filed on behalf of the District a Notice of Insufficiency. On February 11, 2009, OAH issued a determination that Student's second and third issues were insufficient, but that her first issue was sufficient. Student was permitted until February 25, 2009, within which to amend the complaint.

On February 20, 2009, the District filed a motion to dismiss Student's first issue as not within the jurisdiction of OAH. Student did not file an opposition to the motion. On February 23, Student filed a first amended complaint which retained her first issue and restated her second and third issues.¹ On March 3, 2009, District filed a Notice of Insufficiency. On March 4, 2009, OAH issued a determination that Student's amended second and third issues were insufficient, but that her first issue was sufficient. Student was permitted 14 days to file a second amended complaint.

APPLICABLE LAW

The jurisdiction of OAH to hear due process claims under the Individuals with Disabilities in Education Improvement Act (IDEA, 20 U.S.C. §§ 1400, et. seq.) is limited. As adopted under California Education Code § 56501, subdivision (a), there must be a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child, or the provision of a FAPE to a child, or 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 district as to the availability of a program appropriate for a child.

¹ On February 24, 2009, Student filed a motion to "bifurcate the issues" for hearing. This motion is moot because OAH's Determination of Sufficiency Order dated March 4, 2009, determined that the second and third issues were insufficient.

DISCUSSION

District's motion to dismiss Student's first issue is supported by evidence, consisting of an individualized education program (IEP) meeting on December 13, 2007, and a Psychological-Educational Evaluation - Multi-Disciplinary Report. The District members of the December 2007 IEP team found that Student was not eligible for special education and related services under the category of Emotional Disturbance (ED). Therefore, the District contends that because Student is a general education student, OAH does not have jurisdiction to hear the controversy.

Student's first issue claims that the District denied her a free appropriate public education (FAPE) by missing a semester of education, and requests as a remedy a transfer to a different school, educational and mental health support, and compensatory education. Student's second issue in the amended complaint claims that District failed to acknowledge her disabilities and requests a determination of eligibility under the ED category. OAH found this issue to be insufficient because there was no information in the amended complaint about the diagnoses (other than a brief description in connection with the first issue), when the information was provided to the District, or how the diagnoses impact Student's education.²

In order for the District to have denied Student a FAPE in the circumstances described in her first problem, Student would need to prove that she was eligible for special education. Student's second problem is the issue of eligibility. Thus, the two issues are related. District's motion to dismiss is therefore premature and involves its defense to the action. The facts regarding Student's eligibility are entitled to be litigated if they are sufficiently described. Based on the foregoing, Student is entitled to file another amended complaint on or before March 18, 2009, to more fully describe the eligibility problem (as well as her third problem).

ORDER

District's motion to dismiss Student's first issue is denied.

Dated: March 11, 2009

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

² Although Student attached over 60 pages of exhibits to her amended complaint, those documents are evidence to be presented at a hearing, and do not take the place of adequate descriptions of necessary information in the complaint.