

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010080129

ORDER DENYING MOTION TO  
DISMISS

On August 2, 2010, Torrance Unified School District (District) filed a due process hearing request (DPH request) naming Student as the respondent. In general, the DPH request alleges that following District and independent assessments, an IEP team meeting was held at which it was decided an NPS placement would be appropriate; however, to date, the parties have been unable to agree on an exact NPS placement. The sole issue alleged is whether District's offer of placement at Switzer Learner Center is appropriate.

On August 23, 2010, Student filed an opposition to District's motion for a continuance that included a request that OAH dismiss the instant matter on the ground that District cannot file a DPH request while seeking reconsideration of a California Department of Education (CDE) resolution of a compliance complaint regarding Student. Student contends that proceeding with the instant DPH request would violate Title 20 United States Code section 1415(a), which provides that state agencies must develop procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE).

On August 25, 2010, District filed an opposition to the request for dismissal that explained that the compliance complaint referred to in the opposition was filed by Student and alleged, in part, that District should have, but did not, file for due process to determine Student's placement after parents would not agree. District also established that CDE had resolved the compliance complaint in part, by ordering District to send Student a letter either offering Student a mutually agreeable placement or electing to go to due process. District contends in its opposition that its request for reconsideration filed with CDE did not seek reconsideration of the order to offer a mutually agreeable placement or seek due process.

On August 26, 2010, Student filed a reply to District's Opposition to the Request to Dismiss. In the reply, Student disputes numerous factual assertions made by the District and makes numerous factual allegations regarding settlement discussions with the District or its legal counsel. However, Student does not dispute that the resolution ordered by CDE gave District the option of filing for due process in order to comply with CDE's order. Student did not establish that the resolution ordered by CDE indicates a particular placement.

As discussed below, the Motion to Dismiss is denied because CDE's resolution of the compliance complaint contemplated a due process hearing request and there is otherwise no prohibition to conducting a due process hearing while a request to reconsider a compliance complaint is pending.

### *Discussion*

Student contends that for various reasons, such as the cost to taxpayers, the family's lack of an attorney, and various disputed facts about settlement discussions between the parties, it is a denial of due process to conduct a due process hearing while the District's request for reconsideration is on file with CDE. Student also contends that the language of the regulation that suspends compliance complaints while due process requests are pending (34 C.F.R. § 300.152(c)) only applies to situations when the due process hearing request is filed first, followed by the filing of a compliance complaint. Under the facts presented, Student is incorrect.

In general, CDE and/or District is required to establish procedures "in accordance with [IDEA] to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education by such agencies CDE." (20 U.S.C. § 1415(a).) There is also a regulation that provides that compliance complaints to the state education agency be suspended if the same issues are raised in a due process hearing request. (34 C.F.R. § 300.152(c).) Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure that allows for resolution of factual disputes prior to hearing.

Under the facts presented, Student has failed to show that dismissal is warranted. Student is not claiming that CDE has otherwise ordered a placement that would be undermined or suspended if the DPH request was allowed to go forward. To the contrary, Student has quoted the same language from CDE's order as District, showing that CDE ordered District in part to provide a mutually agreeable placement, or file a request for due process hearing if no mutually agreeable placement existed. Obviously, CDE contemplated a due process hearing as a way to end an impasse between the parties as to what would be an appropriate placement for Student under the IDEA. Student cannot plausibly claim that the District is engaged in some type of prohibited harassment that violates the right to due process under the IDEA when the District is doing exactly what the CDE compliance complaint order allows: i.e., filing for due process because the parties cannot agree to a placement. Phrased another way, when CDE, the state agency charged with ensuring implementation of IDEA procedural safeguards, issues an order allowing a District to use the due process hearing procedures to end a dispute with a family regarding placement, it cannot be said that Student and his family are being denied their rights to the procedural safeguards of the IDEA. Moreover, given that the CDE order did not make an order of specific placement, the District's request to CDE for reconsideration of that order cannot act as a bar

to a due process hearing request seeking to resolve the placement issue. Dismissal is not warranted.

ORDER

1. Student's Motion to Dismiss is denied.
2. All dates remain on calendar.

Dated: August 26, 2010

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings