

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2010090001

ORDER DENYING MOTION TO
DISMISS

On July 27, 2010, the District filed a request for due process hearing (complaint) against Student. On August 26, 2010, Student filed a complaint against the District, and a motion to consolidate it with the District-filed case.¹ On September 2, 2010, the District filed a motion to dismiss the Student’s complaint. On September 8, 2010, Student filed opposition to the District’s motion to dismiss.

APPLICABLE LAW

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 IDEA specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.)

¹ The motion for consolidation will be ruled upon in a separate order.

A Student's attorney is entitled to reasonable attorney fees and costs from another party, should a Student prevail against that party in a due process hearing. (20 U.S.C. § 1415(i)(3); Ed. Code, § 56507, subd. (b).) There is no statutory or regulatory law requiring a Student to file his own complaint in order to obtain such an award.

DISCUSSION

In its motion to dismiss Student's complaint, the District asks that the Office of Administrative Hearings (OAH) dismiss it because it is "identical" to the District's complaint. The District presents no authority to support the dismissal of Student's complaint on this ground. The District also asserts that Student has filed his complaint so that his attorney can obtain an award of attorneys' fees should Student prevail against the District in a hearing concerning the District's complaint. In his opposition, Student asserts that the complaints are not identical, and that there is no requirement that he file his own complaint in order to be the prevailing party in a special education due process hearing.

The District asks, in its complaint, that OAH find that its offer to place Student in a District high school was an offer of a FAPE for the 2010-2011 school year. Student, in his complaint, asks that OAH find that the District's offer of placement for the 2010-2011 school year was not an offer of a FAPE. Student also asks that OAH find that the District predetermined his placement for the 2010-2011 school year, thereby violating his right to a FAPE and impeding his parents' participation in the IEP process. Although the complaints filed by Student and the District are similar, they are not identical, and Student could be precluded from raising his issues at hearing if his complaint was dismissed and he was only permitted to present evidence relevant to the issue raised in the District's complaint.

Further, as a remedy, Student asks that OAH order placement for the 2010-2011 school year in either the specific private school that he is currently attending, Stanbridge Academy (Stanbridge), or a nonpublic, nonsectarian school that is certified by the California Department of Education, and the same distance from his home as Stanbridge. The ALJ hearing the District's case would not have jurisdiction to order the relief requested by Student if only the District's complaint was adjudicated.

Finally, there is no requirement for a Student to file his own due process complaint in order to be considered a prevailing party entitled to attorney's fees and costs pursuant to IDEA. Accordingly, the District's motion to dismiss Student's complaint is denied.

ORDER

The District's motion to dismiss Student's complaint is denied.

Dated: September 9, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings