

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CYPRESS SCHOOL DISTRICT.

OAH CASE NO. 2010110572

ORDER DENYING NOI AND
GRANTING MOTION TO DISMISS

On November 12, 2010, Student filed a due process hearing request (complaint), naming Cypress School District (District) and various individuals as respondents. The complaint on its face stated that it was not making any claims under the Individuals with Disabilities Education Act (IDEA) (title 20 United States Code section 1400 et seq.). The complaint also states Student “concedes that he is receiving a free appropriate public education, and does not challenge the sufficiency of his Individualized Education Program (“IEP”).”

On November 30, 2010, District filed a notice of insufficiency (NOI). Alternatively, District filed a motion to dismiss for lack of jurisdiction over the subject matter and individually named respondents. No opposition was received. As discussed below, the NOI must be denied as untimely. However, District is correct that OAH lacks jurisdiction over the subject matter of the claims and the individually named respondents, such that the complaint must be dismissed.

NOI

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A). The complaint is deemed sufficient unless a party notifies the Office of Administrative Hearings and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

Here, the complaint was filed and served via facsimile on November 12, 2010. District’s NOI was filed November 30, 2010, more than 15 days from the date the complaint was filed. Accordingly, the complaint must be deemed sufficient.

Motion to Dismiss

Although special education law does not provide for a summary judgment procedure, 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.....).

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

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.)

Here, Student’s complaint is absolutely clear that Student is not alleging any violation of IDEA. Student goes even further and concedes that he is receiving a FAPE and is not challenging his current IEP. Accordingly, because Student is not alleging any legal issues within OAH’s limited jurisdiction, the complaint must be dismissed.

Similarly, OAH’s limited jurisdiction to determine matters involving IDEA compliance does not include naming individuals as respondents. Under no circumstances can an individual be considered a “public agency” for purposes of an IDEA due process hearing. Thus, even if Student alleged claims under IDEA, OAH would not entertain claims against individually named respondents.

In light of the above, the complaint must be dismissed for lack of jurisdiction over the subject matter and individual respondents.

ORDER

1. District's NOI is denied as untimely.
2. District's Motion to Dismiss for lack of jurisdiction over the subject matter and individual respondents is granted.

Dated: December 6, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings