

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON  
BEHALF OF STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010120724

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS

On December 20, 2010, Student filed a Request for Due Process Hearing (complaint) against the Folsom Cordova Unified School District (Folsom) and the Natomas Unified School District (Natomas). On January 25, 2011, Natomas was dismissed as a party as Natomas and Student reached an agreement during the resolution session.

On March 30, 2011, Folsom filed a motion to dismiss, alleging that Student, in one issue, did not allege a violation against Folsom, and in two other issues that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear Student's claims. On May 2, 2011, Student filed a response.

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.)

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 jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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 OAH 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).)

## DISCUSSION

In the present matter, Folsom contends that Student's Issues 1, 4 and 5, as they relate to Folsom,<sup>1</sup> should be dismissed because Student fails to allege any violation against Folsom and OAH does not have jurisdiction to hear Student's claims.

In Issue 1, Student alleges that Natomas failed to properly address Student's specified unique needs. However, the complaint requests a proposed resolution against both Natomas and Folsom. Because Student does not allege any conduct by Folsom that denied Student a FAPE, Issue 1 is dismissed.

Regarding Issue 4, Student alleges that Folsom failed to provide all requested Student records. Folsom asserts that OAH does not have jurisdiction to hear this claim. However, OAH does have jurisdiction if the complaint contends that a district's failure to produce required school records prevented parents from meaningfully participating in the educational decision-making process, which denied the student a FAPE. (20 U.S.C. § 1415(f)(3)(E)(ii); see, Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484.) If Folsom contends that the complaint in Issue 4 contains insufficient facts, Folsom waived that argument by not filing a timely notice of insufficiency. Therefore, OAH has jurisdiction to hear Issue 4.

In Issue 5, Student contends that Folsom failed to provide the placing agency, which is not identified, with sufficient information regarding appropriate special education programs to meet Student's mental health needs. Student's complaint contains an arguable

---

<sup>1</sup> Student's complaint contains two Issues 4, 5 and 6. This order refers to the Issues 4 and 5 in the complaint that refer to both Folsom and Natomas; the other Issues 4 and 5 only refer to Natomas.

contention that Folsom denied him a FAPE by failing to appropriately share information pursuant to Government Code, sections 7570, et seq.<sup>2</sup> As with Issue 5, if Folsom believed that the complaint contained insufficient facts, it needed to file a notice of insufficiency. Accordingly, OAH has jurisdiction to hear Issue 5.

#### ORDER

1. Folsom's motion to dismiss Issue 1 is granted.
2. Folsom's motion to dismiss Issues 4 and 5 is denied. The matter shall proceed as scheduled.

Dated: May 3, 2011

/s/

---

PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

---

<sup>2</sup> California has established a statutory scheme that provides for interagency responsibility in regards to the provision of special education related services, including mental health services. (Gov. Code, §§ 7570–7588 (Ch. 26.5).) The statutory scheme is known as AB 3632 after the Assembly Bill that created the law.