

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

CORONADO UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011010808

ORDER DENYING MOTION TO  
DISMISS

On January 25, 2011, the Coronado Unified School District (District) filed a Request for Due Process Hearing (complaint) against Student. On February 8, 2011, Student filed a Motion to Dismiss, alleging that the Office of Administrative Hearings (OAH) did not have jurisdiction to hear the District's complaint because it is the subject of a compliance investigation by the California Department of Education (CDE) and Student no longer resided within the District boundaries. On February 16, 2011, the District filed an opposition.

APPLICABLE LAW

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the Individuals with Education Act (IDEA) or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

The purpose of the 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.)

Education Code section 56501, subdivision (a) provides that a parent or public education agency may request a due process hearing when there is a proposal or a refusal to initiate or change the identification, assessment, educational placement or the provision of a FAPE to their child, or when there is a disagreement regarding the availability of a program available for the child. Pursuant to this provision, a public education agency may initiate a due process hearing to show that its assessment is appropriate. (Ed. Code § 56329, subd. (c).)

In addition to due process hearing procedures, each state educational agency shall adopt written procedures for resolving complaints of individuals and organizations regarding special education programs. (34 C.F.R. § 300.151(a) (2006).)<sup>1</sup> As part of complaint investigations, a state educational agency must perform an investigation, if necessary; allow for the opportunity to submit additional information regarding the allegations in the complaint; review all relevant information and make a determination as to whether the public agency is violating the IDEA; and issue a written decision that addresses each allegation in the complaint. (34 C.F.R. § 300.152(a).) The state educational agency must complete this investigation and issue the written decision within sixty days of the filing of the complaint, unless exceptional circumstances exist which warrant an extension. (*Id.*)

If a complaint is also the subject of a due process hearing, or contains issues which are part of that hearing, the state educational agency must set aside any part of the complaint being addressed in the hearing until the hearing is concluded. (34 C.F.R. § 300.152(c)(1).) If an issue raised in a compliance complaint has previously been decided in a due process hearing involving the same parties, the due process hearing decision is binding on that issue. (34 C.F.R. § 300.152(c)(2).)

## DISCUSSION

Student contends that OAH does not have jurisdiction to hear the District's complaint that it offered Student a FAPE in its August 23, 2010 interim placement individualized education program (IEP) and in the September 23, September 27, November 2, November 10, November 17 and December 14, 2010 IEP. Student asserts that OAH does not have jurisdiction because Student moved out of the District before school resumed in January 2011 after the winter break. While the District is not presently responsible to provide Student with a FAPE, OAH does have jurisdiction to hear the District's claims whether it offered Student a FAPE from August 2010 through December 2010, because

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<sup>1</sup> All subsequent references to the Code of Federal Regulations are to the 2006 version.

Student may still file a complaint against the District that it denied her a FAPE, and request compensatory education for any purported violation.

Regarding Student's contention that OAH does not have jurisdiction because Parent filed a compliance complaint with CDE, the District's hearing issues are within OAH's jurisdiction for due process hearings. The existence of a compliance complaint filed with CDE does not constitute a basis for dismissal of a due process hearing complaint on the same issue. Indeed, pursuant to the Code of Federal Regulations, title 34, section 300.152(c)(1), CDE must set aside any part of the compliance complaint that is being addressed in the due process hearing, until conclusion of the hearing, which CDE did on February 14, 2011. Hence, there is no ground for dismissal of the District's complaint as OAH has jurisdiction.

### ORDER

Student's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: February 23, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings