BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. MORENO VALLEY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2011040127 ORDER GRANTING DISTRICT'S MOTION TO DISMISS

BACKGROUND

On April 1, 2011, Student filed a Request for Due Process Hearing (complaint). Student's complaint does not name a specific school district or any other agency as a party to the case. However, the Moreno Valley Unified School District was apparently served with the complaint and subsequently filed a joint notice of insufficiency (NOI) and motion to dismiss the complaint on April 20, 2011. In a separate order, the Office of Administrative Hearings found Student's complaint sufficient based upon the untimely filing by the District of its NOI.

The District's motion to dismiss is premised on the fact that Student's complaint does not state any basis for jurisdiction of OAH over the issues raised in Student's complaint. As noted by the District, it is unclear what issues Student is raising that might give rise to a due process complaint under the Individuals with Disabilities Education Act (IDEA). Student, who is in the 10th grade, states that he is being influenced, apparently negatively, by another young man who is already 18 years old. Student states that if he is given a second chance and is given counseling, he will succeed. Student then states that at an individualized education program meeting a science teacher told those in attendance that she had to "put her own child out of her home." Student feels this statement should never have been made at the meeting and that the science teacher should be reprimanded for having offered this information in public with students present. However, Student does not state what actions the District took or did not take that might have prevented Student from receiving a free appropriate public education or in some other way violated his rights under the IDEA. Student has not filed an opposition or other reply to the District's motion to dismiss his complaint.

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

DISCUSSION

In this case, Student's complaint fails to give any information that would demonstrate how OAH would have jurisdiction over Student's issues with the District. Student does not state that he is presently eligible for special education and related services, does not state if he receives education under an individualized education plan, and does not state how, if at all, the District failed to identify Student's needs, failed to assess him, or failed to provide him with a free appropriate public education. Student does not state what actions the District took that put him in the position of needing a "second chance." Without any facts that connect the District to some alleged violation of Student's rights under the IDEA, there is no basis for OAH jurisdiction over any of the issues raised in Student's complaint.

MEDIATOR ASSISTANCE FOR NON-REPRESENTED PARENTS

A parent who is not represented by an attorney may request that OAH provide a mediator to assist the parent in identifying the issues and proposed resolutions that must be included in a complaint.[1] Parents are encouraged to contact OAH for assistance if they intend to amend their due process hearing request. If Student's parent wishes mediator assistance, she may either write to OAH in Sacramento, or call OAH at (916) 263-0880 to make the request.

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[1] Ed. Code, § 56505.

ORDER

1. The District's motion to dismiss Student's complaint is granted without prejudice.

2. Student shall be permitted to file an amended complaint under Title 20 United States Code section 1415(c)(2)(E)(i)(II).[2]

3. The amended complaint shall comply with the requirements of Title 20 United States Code section 1415 (b)(7)(A)(ii), and shall be filed not later than 14 days from the date of this order.

4. If Student fails to file a timely amended complaint, this case will be dismissed without prejudice.

5. If Student's parent wishes to receive help from an OAH mediator in writing the amended complaint, she should either write to OAH, or call the OAH offices in Sacramento at telephone number (916) 263-0880.

Dated: April 21, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

[2] The filing of an amended complaint will restart the applicable timelines for a due process hearing.