

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

FREMONT UNION HIGH SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011070318

ORDER ON SUFFICIENCY OF DUE  
PROCESS COMPLAINT AND  
DENYING MOTION TO DISMISS

On July 8, 2011, Lenore Silverman, Attorney for the Fremont Union High School District (District), filed a request for an expedited due process hearing (complaint) naming Student.

On July 11, 2011, Elizabeth Aaronson, Attorney for Student, filed a notice of insufficiency (NOI) and a motion to dismiss District's complaint.

On July 12, 2011, District filed an opposition to the NOI and Student's motion to dismiss.

APPLICABLE LAW AND DISCUSSION

*Notice of Insufficiency*

An unexpedited complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the Office of Administrative Hearings (OAH) and the other party, in writing, within 15 days of receiving the complaint, that the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) Title 20 United States Code section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

Title 20 United States Code section 1415(k)(3) permits a party to request an expedited hearing to appeal a decision regarding a disciplinary change of placement, such as placement in an alternative education setting or a manifestation determination regarding student's conduct. This section requires an expedited hearing to occur within 20 school days of the date the hearing is requested and for a decision to be rendered within 10 school days of the conclusion of the hearing. With respect to expedited hearing requests, there is no provision similar to that in title 20 United States Code section 1415(c)(2)(A), allowing for the testing

of the sufficiency of an expedited hearing request. Indeed, there is insufficient time to complete the NOI process in expedited hearing matters. Thus, because an NOI is not permitted with respect to expedited hearing requests, Student's NOI is denied.

### *Motion to Dismiss*

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.)

District's complaint represented that an IEP team meeting was held on July 6, 2011, to review behavioral data, to discuss Student's behavior during the extended school year (ESY), and to conduct a manifestation determination related to an incident that occurred on July 5, 2011, that resulted in alleged injuries to District staff. As a result of this meeting District representatives determined that Student's conduct was a manifestation of his disability and the current placement of him was not appropriate. Accordingly, District recommended that Student be placed at Achieve Kids, a certified non-public school so that a functional analysis assessment could be developed—Parents disagreed.

In his motion, Student contends that no offer was made Parents and that District is not seeking expulsion for a violation of a code of conduct and is not seeking to extend suspension beyond the end of ESY. Accordingly, Student asserts that there is no dispute ripe for resolution. Student's motion to dismiss is not accompanied by any evidence, such as a declaration under penalty of perjury establishing that District did not offer placement at Achieve Kids or that there is no dispute between the parties as to what constitutes the appropriate prospective placement for Student. Accordingly, because District has set forth a dispute that is within the jurisdiction of OAH, Student's motion to dismiss is denied.

ORDER

1. Student's NOI is denied.
2. Student's motion to dismiss District's complaint is denied.
3. The matter shall proceed as scheduled.

Dated: July 13, 2011

/s/

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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings