

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

SOUTH BAY UNION SCHOOL
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2012080849

ORDER DENYING MOTION TO
DISMISS

On August 28, 2012, the South Bay Union School District (District) filed a Request for Due Process Hearing (complaint) against Student. On September 1, 2012, Student filed a Motion to Dismiss, alleging that the Office of Administrative Hearings (OAH) did not have jurisdiction to hear the District's complaint and because the issues are the subject of a compliance investigation by the California Department of Education (CDE). On September 7, 2012, the District filed an opposition. On September 10, 2012, Student filed a reply brief.

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.)

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).)¹ 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 60 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 June 18, 2012 individualized education program (IEP). However, the issues determining whether the District offered Student a FAPE concern whether the District timely notified Parents of an emergency intervention involving Student, failing to conduct a functional analysis assessment (FAA) if the IEP team determines that behavior approaches in Student's IEP are not working, and timely production of Student's educational records. Student asserts that OAH does not have jurisdiction over the District's claims because the District's contentions do not involve whether the District provided Student with a FAPE. However, the issues presented do involve whether the District provided Student a FAPE, and which OAH has jurisdiction to determine.²

¹ All subsequent references to the Code of Federal Regulations are to the 2006 version.

² Nothing in this order prevents Student from filing a Notice of Insufficiency by September 12, 2012, whether the District alleged sufficient facts in the complaint as the District's factual narrative does not contain specific allegations as to any incident or IEP concern about notifying Parents of an emergency intervention, the conducting of an FAA or

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. Hence, there is no ground for dismissal of the District's complaint as OAH has jurisdiction to hear the issues in the District's complaint.

ORDER

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

Dated: September 10, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

production of education records. (20 U.S.C. § 1415(b) & (c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)