

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL  
DISTRICT AND MARE ISLAND  
TECHNOLOGY ACADEMY CHARTER  
SCHOOL.

OAH CASE NO. 2009050182

ORDER DENYING MOTION TO  
DISMISS, DENYING MOTION TO  
CONTINUE, AND ORDER  
DETERMINING SUFFICIENCY OF  
THE COMPLAINT

On April 30, 2009, Student's parent filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint) on behalf of Student naming the Valley City Unified School District (District) and Mare Island Technology Academic Charter School (MITAC). Student's parent also filed, on behalf of Student, a Motion to Expedite Due Process Complaint and Notice to Stay Put.

On May 6, 2009, OAH issued a Scheduling Order and Notice of Dual Hearing Dates Including Expedited Hearing, Prehearing Conference, and Mediation. This Scheduling Order established mediation and hearing dates for both the expedited and non-expedited portions of Student's complaint.

Also on May 6, 2009, OAH issued a supplemental order requesting more information regarding Student's Motion for Stay Put.

On May 13, 2009, A. Kay Altizer, the Director of the Special Education SELPA, filed on behalf of District and MITAC a Motion to Dismiss Student's complaint or, in the alternative, a Motion to Continue the Due Process Hearing.

OAH has received no response from Student.

APPLICABLE LAW

*Motion to Dismiss*

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.)

A party who files an adequate complaint in a dispute under the Individuals with Disabilities in Education Act (IDEA) is generally entitled to a hearing on his claims. (20 U.S.C. § 1415(f)(1)(A); Ed. Code, §§ 56043(s), 56501(b)(4).)

The party requesting a special education due process hearing must provide the opposing party with notice of the complaint by delivering a copy of the complaint. (20 U.S.C. § 1415(b)(7)(A); Ed. Code, § 56502, subd. (c).)<sup>1</sup> Education Code section 56502, subdivision (c), requires that the party filing the request provide the opposing copy with notice of the complaint at the same time that it is filed with OAH.

Dismissal may be an appropriate remedy when a party has not been served a copy of the complaint.

### *Continuance*

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination conducted by the district, may request and is entitled to receive an expedited due process hearing. (34 C.F.R. § 300.532(a)(2006).) In such event, “(T)he SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed.” (34 C.F.R. § 300.532(c)(2) (2006).) In California, OAH is the hearing office that assumes this responsibility for the California Department of Education. (Ed. Code, § 56504.5, subd. (a).)

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020.) In weighing motions for continuances in special education due process matters, the Office of Administrative Hearings (OAH) looks to California Rules of Court for guidance. Generally, continuances of matters are disfavored. (Cal. Rules of Court, 3.1332(c).)

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<sup>1</sup> All statutory citations are to Title 20 United States Code unless otherwise noted.

### *Notice of Insufficiency*

A party against whom a due process complaint has been filed has the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c); Ed. Code § 56502, subd. (d)(1).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of section 1415(b)(7)(A) and Education Code section 56502, subdivision (c)(1). Section 1415(c)(2)(D) requires that the sufficiency of the complaint be evaluated based on the face of the complaint.

The complaint is deemed sufficient unless the party against whom the complaint has been filed notifies the due process hearing officer (OAH) and the other party in writing, within 15 days of receiving the complaint, that he or she believes the complaint has not met the notice requirements. (§ 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).)

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (§ 1415(b)(7)(A)(ii)(III) & (IV).) The purpose of these requirements is to promote fairness by providing respondents with a specific understanding of the allegations and to provide a school district with sufficient information to make a specific response to the complaint as required by section 1415(c)(2)(B), and to participate in a resolution session and mediation under section 1415, subsections (e) and (f). The party against whom the complaint has been filed is entitled to know the nature of the specific allegations being made against him or her, such that he or she may be able to prepare a defense. (*Tadano v. Manney* (9th Cir. 1947) 160 F.2d 665, 667; *Hornsby v. Allen* (5th Cir. 1964) 326 F.2d 605, 608.)

## DISCUSSION

### *Motion to Dismiss and Continuance*

District and MITAC filed their Motion to Dismiss or, in the Alternative, Motion to Continue Due Process Hearing with OAH, on May 13, 2009. District and MITAC concede, jointly, in this motion that the “documents,” which presumably refers to OAH’s Scheduling Order of May 6, 2009, were faxed to District by OAH on or about the afternoon of May 6, 2009. Ms. Altizer asserts in the motion that she received the “documents” on Monday, May 11, 2009, when she returned from a meeting out of the District, where she had been the previous week. The Director of MITAC also received a copy of the “documents” on May 11, 2009, after his return from a week-long field trip with students. Ms. Altizer asserts that “[f]rom May 11<sup>th</sup> to this date [May 13, 2009] neither the Charter School Director nor the Special Education Director have been able to locate a Notice of Issues from the parent. Therefore, the parent did not meet their [sic] responsibility to provide appropriate service of process.”

However, Student's Complaint and Motion for Stay Put, filed with OAH on April 30, 2009, is accompanied by a proof of service, signed by Arthur Murray on April 3, 2009, declaring under penalty of perjury that he mailed, by U.S. Mail with postage prepaid, a copy of the documents to District and MITAC on March 20, 2009. Student's Motion to Expedite Due Process Complaint and Notice to Stay Put is accompanied by a proof of service, also signed by Arthur Murray on April 3, 2009, declaring under penalty of perjury that he mailed, by U.S. Mail with postage prepaid, a copy of the documents to District and MITAC on "March 2009".

Based on the proof of service filed with OAH by Student in connection with each document Student filed with OAH, described above, Student has established that the Complaint filed with OAH on April 30, 2009, was properly served to the opposing parties. Ms. Altizer's motion, which was not accompanied by supporting declaration and not signed under penalty of perjury, alleges that neither she nor the Special Education Director for MITAC "have been able to locate a Notice of Issues from parent." Ms. Altizer does not allege that District and MITAC did not *receive* the documents served by Student.

Moreover, on May 6, 2009, District and MITAC were made aware, by receipt of OAH's Scheduling Order, that Student had filed a complaint. The Scheduling Order contains all dates set for hearing. Ms. Altizer's motion is absent of any allegation that she attempted to get a copy of Student's filings from OAH or from Student's parent after she received the Scheduling Order from OAH. In addition, the fact that the director of District and the Director of MITAC were not in their offices on May 6, 2009, is not grounds for OAH to disregard the fact that the notice was received by District and MITAC on that May 6, 2009.

Moreover, this matter was dually set as both an expedited and non-expedited matter, based on Student's contention in her Complaint that she is a student with a disability who has been suspended from school since March 10, 2009. Student established through the proof of service filed with OAH in connection with each of her filings that District was served with the documents. There is no provision in law that authorizes OAH to continue an expedited hearing. In addition, Student has a right to a speedy hearing. District has not alleged that it made any attempt to meet and confer with Student's parent regarding a continuance.

Based on the foregoing, District and MITAC's Motion to Dismiss and Motion to Continue are denied.

#### *Notice of Insufficiency*

Student claims that she has had an individualized education program (IEP) for years, and that she was suspended from school at MITAC on March 10, 2009, and that District held a manifestation determination individualized education program meeting on March 18, 2009, without the parent present although the parent made numerous attempts to reschedule the meeting. Parent also alleges that she disagrees with the IEP team's manifestation

determination that the suspension was not related to Student's disability. This claim gives rise to the expedited due process proceeding, and it is pled against both MITAC and District. There is no provision of law that authorizes OAH to grant a notice of insufficiency in an expedited matter.

Student raises three other claims as well. The first claim is whether MITAC is required to continue its obligation to provide a FAPE to Student and to rectify its failures to provide special education services to Student. This issue presumably refers to MITAC's obligation subsequent to Student's suspension on March 10, 2009, and is properly included in the expedited due process proceeding.

The next issue is that Student was denied a free appropriate public education because Student's curriculum, provided pursuant to her IEP drafted by District and MITAC, has not been modified to her learning level, and MITAC is providing a sixth grade curriculum to Student even though her learning level is at the third or fourth grade. That issue is sufficiently pled to put the parties on notice of the claims.

The final issue involves MITAC's alleged failure to provide speech therapy services. It is clear that this issue relates to the current school year, which involves an IEP drafted by District and MITAC. This issue is sufficiently alleged to put the parties on notice of the claims.

#### ORDER

1. District and MITAC's Motion to Dismiss is denied.
2. The complaint is sufficient pursuant to section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1) ) and Education Code section 56502, subdivision (d)(1).
3. District and MITAC's Motion to Continue is denied.
4. All mediation, prehearing conference, and hearing dates in this matter shall remain on calendar.

Dated: May 20, 2009

/s/

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DEBRA HUSTON  
Administrative Law Judge  
Office of Administrative Hearings