

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

FOLSOM CORDOVA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009090847

ORDER ON DISTRICT'S MOTION TO
LIMIT ISSUES AND MOTION TO
DISMISS

On September 16, 2009, Student's parents filed a due process hearing request (complaint) on Student's behalf, naming Folsom Cordova Unified School District (District) as the respondent. The complaint alleged the following issues:

- 1) Whether at an IEP team meeting on September 11, 2009, District failed to provide Student with a comparable interim placement and services, including transportation, in the least restrictive environment upon his transfer into the District.
- 2) Whether District failed to provide proper notice to Parents regarding the September 11, 2009 IEP team meeting.
- 3) Whether District failed to have an IEP in place for Student at the beginning of the 2009-2010 school year.
- 4) Whether District failed to find Student eligible for special education under the proper eligibility category for purposes of the interim IEP.
- 5) Whether District staff were properly trained to implement the interim IEP.
- 6) Whether Student was denied a free appropriate public education (FAPE) because parents were informed at the September 11, 2009 IEP team meeting that Student would not be participating in sports like "flag football."
- 7) Whether, on Student's first day of school in the District, he was deprived of adapted physical education services listed in the interim IEP.
- 8) Whether Student was denied a FAPE because Student was denied use of the school hallway to get to class.

On October 30, 2009, District filed a Motion to Limit Issues at Hearing (Motion to Limit) and a Motion to Dismiss Issues (Motion to Dismiss). On November 3 and 4, 2009,

Student filed oppositions to the Motion to Limit and the Motion to Dismiss. Both motions will be ruled on in this Order.

Motion to Limit

District contends in the Motion to Limit that Student, through his filings and correspondence with the District, intends to expand the hearing issues to events that occurred after the September 16, 2009 filing date. On November 3, 2009, Student filed an opposition, which demonstrated District's point by listing 27 issues that Student believed were within the scope of the complaint. For the reasons set forth below, the Motion to Limit is granted.

Parents have 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).) However, "the party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the [complaint], unless the other party agrees otherwise." (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) A complaint may be amended at any time prior to five days before the hearing if the other party agrees or the hearing officer grants permission. (20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56502, subd. (e).) Upon amendment of the complaint, all decision timelines restart in order to permit the parties an opportunity to attend a resolution session. (See *Ibid.* & Ed. Code, § 56501.5 [describing mandatory resolution session before parties can proceed to a due process hearing].)

Here, Student has the right to request permission from OAH to file an amended complaint, but has yet to do so. Absent an amended complaint, District is correct that the issues for hearing are limited to the issues set forth above. District is also correct that the issues are limited to the time frame prior to the September 16, 2009 filing date of the complaint. Thus, District's Motion to Limit is granted.

Motion to Dismiss

District contends that some of Student's issues must be dismissed because they are facially without merit. Specifically, District contends that the issue of whether District had an IEP in place for Student at the beginning of the school year (Issue 3, above) is meritless based on exhibits showing that the school calendar began in August of 2009 and Student enrolled in September of 2009. District contends that the issues related to teacher qualifications (Issue 5, above), "flag football" (Issue 6, above), and denial of use of the hallway (Issue 8, above), are outside of OAH jurisdiction because they do not directly allege a violation of IDEA. District contends that the issue regarding eligibility category (Issue 4, above), must be dismissed because the complaint on its face demonstrates that the District acted properly by adopting the eligibility category used in Student's prior IEP for purposes of the interim IEP. Although the Motion to Dismiss was supported by documents, it was not supported by any declarations under penalty of perjury regarding the authenticity of the

documents. Student disagrees and contends that all issues should go to hearing on the merits. As discussed below, the Motion to Dismiss lacks merit.

OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc..... However, OAH will generally not dismiss properly pleaded claims that can only be resolved by developing a factual record at hearing.

Here, District did not timely file a notice of insufficiency as to the complaint and it must be construed as sufficient to put the District on notice of Student's claims. Each of the eight allegations identified in this Order can be interpreted as being made under the IDEA. District's Motion to Dismiss in essence asks OAH to rule on the merits of the claims prior to hearing based on unauthenticated documents. Because the eight claims are not facially outside of OAH jurisdiction, Student should be afforded an opportunity to develop a factual record at a hearing. Accordingly, the motion to dismiss is denied.

ORDER

1. The Motion to Limit is granted. The issues at hearing are limited to the eight issues set forth in this Order and to the time period prior to the September 16, 2009 filing date of the complaint. Nothing in this order limits Student's right to amend the complaint under the procedure set forth in Education Code section 56502, subdivision (e).

2. The Motion to Dismiss is denied.

Dated: November 04, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings