

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011020712

ORDER DENYING MOTION TO
DISMISS ISSUES AND VACATING
EXPEDITED HEARING DATES

On February 24, 2011, Student filed a due process hearing request alleging 15 issues. Of the 15 issues, Issues 1, 2, and 14 directly referenced an allegation that District obtained a temporary restraining order (TRO) in Sacramento County Superior Court that changed Student's placement prior to a manifestation determination. The factual allegations included allegations that the District had bypassed IDEA procedural protections by seeking the TRO. Issues 8, 9, and 10 alleged District failed to provide prior written notice prior to changing Student's placement and failed to provide notice of behavior incidents prior to District obtaining the TRO. Student did not expressly ask for an expedited hearing under the IDEA and the issues could generally be interpreted as setting forth issues regarding a denial of FAPE, rather than as issues seeking an expedited hearing. OAH issued a scheduling order that set both expedited and non-expedited hearing dates.

On March 10, 2011, District filed a motion to dismiss Issues 1, 2, 8-10, and 14, on the ground that the Superior Court's issuance of the TRO deprived OAH of any jurisdiction to hear the issues. In addition, District contended that the expedited hearing dates should be vacated because expedited hearings under the IDEA did not apply if an outside entity, like the Superior Court, effected the change in placement rather than District, and on the ground that Student's relocation outside of District's area of service has rendered the expedited hearing moot. On March 17, 2011, Student filed a statement of non-opposition to vacating the expedited hearing dates. In effect, Student's non-opposition clarifies that Student is not seeking an expedited hearing at this time. Student did not take a position on District's motion to dismiss issues for lack of jurisdiction.

As discussed below, dismissal of Student's issues is not warranted. Further, because Student has clarified that she is not seeking an expedited hearing at this time, the expedited hearing dates will be vacated.

Motion to Dismiss

As an initial matter, District contends that Issues 1, 2, 8-10, and 14, must be dismissed on the ground that the Superior Court's issuance of the TRO deprived OAH of any jurisdiction to hear the issues.

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.)

The purpose of the 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.)

Although 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. . . ., OAH will not dismiss claims that have otherwise been properly pleaded. The District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings and/or motion for summary judgment prior to giving a petitioner the opportunity to develop a factual record at hearing. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

Here, while there may have been some merit to District's arguments that expedited due process hearing procedures would not have applied under the facts, and that OAH does not have jurisdiction to review whether the TRO was properly granted, District fails to point to any authority that would deprive OAH of jurisdiction to determine whether Student was denied a FAPE by District's actions. Thus, because all of Student's allegations can be interpreted as raising a question of whether Student was denied a FAPE, District is incorrect

that OAH lacks jurisdiction to proceed to hearing on Issues 1, 2, 8-10, and 14. Accordingly, District's motion to dismiss these issues is denied.

Vacate Expedited Hearing Dates

As part of the IDEA procedural protections related to imposition of school discipline, a student may request an expedited due process hearing on the issues of change of placement or disagreement with a manifestation determination. (20 U.S.C. § 1415(k)(3)(A), (k)(4)(B); 34 C.F.R. 300.532(c).)

Here, Student has clarified that she is not seeking an expedited hearing on the issues related to the TRO and other FAPE issues she alleged. Accordingly, the expedited hearing dates will be vacated.

ORDER

1. District's Motion to Dismiss Issues 1, 2, 8-10, and 14 for lack of jurisdiction is denied.
2. All expedited hearing dates are vacated.
3. The hearing shall proceed as scheduled according to the non-expedited hearing schedule.

Dated: March 17, 2011

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings