

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MT. DIABLO UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011061023

ORDER DENYING MOTION TO
DISMISS

On June 21, 2010, District filed a Request for Due Process Hearing (complaint) against Student. In its complaint, District sought to place Student at a California Department of Education (CDE) certified non-public school without Parents' consent.

On July 1, 2011, Student filed a Motion to Dismiss District's Due Process Complaint (motion) on the grounds that "the dispute is not ripe for adjudication." Specifically, Student contends that District's complaint is not ripe because certain facts were omitted in District's complaint, and because Student has a pending CDE complaint that had directed District to take certain actions.

On July 6, 2011, District filed an opposition to Student's motion.

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 the Office of Administrative Hearings (OAH) is limited

to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

In his motion, Student contends that because there is pending CDE complaint, there are no disputes between the parties. This assertion is not supported. Regardless of the pending CDE complaint, District has the right “to present a complaint regarding matters involving proposal or refusal to initiate or change the ... educational placement of a child.” The District’s proposed placement and/or change in educational placement of Student to a “CDE certified non-public school without Parental consent” is the type of claim a party may present to OAH. The fact that District seeks to change Student’s placement “without Parents’ consent” support a finding that there is a “dispute” between Parents and District regarding the proposed placement and/or change in placement.

Furthermore, “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 300.661(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 due process Complaint”. (*Capistrano Unified School District v. Student* (2006), Cal.Ofc.Admin.Hrngs. Case No. 2006080389, p2.) Therefore, District’s complaint is properly brought, and is thus within OAH’s jurisdiction. Student’s motion to dismiss is denied.

ORDER

Student’s Motion to Dismiss District’s Due Process Complaint is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: July 7, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings