BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. BELLFLOWER UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015020485 ORDER DENYING STUDENT'S REQUEST FOR CLARIFICATION OF DISTRICT'S RESPONSE

On February 3, 2015, Student filed a request for due process hearing (due process complaint) naming Bellflower Unified School District.

On February 13, 2015, District filed a response to Student's due process complaint. On February 17, 2015, Student filed a request that OAH "clarify" District's response to determine whether it complies with the Individual with Disabilities Act (20 U.S.C. § 1400 et seq. (IDEA)) and California law.

On February 23, 2015, Student filed a response to District's response.

APPLICABLE LAW

The IDEA requires that a school district explain its actions or inactions with regard to a student's educational program to the parent in writing upon the parent's filing of a due process complaint, unless it has already done so:

> If the local educational agency has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process complaint notice, such local educational agency shall, within 10 days of receiving the complaint, *send to the parent* a response....
> . . .
> Except as provided in clause (i), the non-complaining party shall, within 10 days of receiving the complaint, *send to the complain[ant]* a response that specifically addresses the issues raised in the complaint.
>
> (20 U.S.C. § 1415(c)(2)(B)(i) and (ii)(emphasis added); See also Ed. Code § 56502, subd. (d)(2)(b) [requiring prior written notice or response to parent].)

Special education due process hearings are limited to an examination of the time frame pleaded in the complaint and as established by the evidence at the hearing and

expressly do not include declaratory decisions about how the IDEA would apply hypothetically or to issues outside of the proceeding. (Gov. Code, § 11465.10-11465.60; Cal. Code Regs., tit. 5, § 3089; see also *Princeton University v. Schmid* (1982) 455 U.S. 100, 102 [102 S.Ct. 867, 70 L. Ed. 2d 855] ["courts do not sit to decide hypothetical issues or to give advisory opinions"]; *Stonehouse Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 539-542 [court deemed the matter not ripe for adjudication because it was asked to speculate on hypothetical situations and there was no showing of imminent and significant hardship].)

DISCUSSION AND ORDER

Here, Student requests that OAH opine on the sufficiency of District's response to Parent. Student also asserts, without any authority, that District's response to Parent may constitute District's own filing of a due process complaint.

The IDEA requires that an agency respond in writing *to the parent* with regard to issues raised in a due process complaint, either by prior written notice or in response to the complaint. However, an agency is not required to file a response with OAH, and a response does not become necessary or relevant to the due process proceeding simply because it was faxed to, and filed with, OAH. A "clarification" of the sufficiency of District's response to Parent is unnecessary for this matter to proceed to hearing and would constitute an advisory opinion. Therefore, OAH declines to determine the sufficiency of District's response.

Student's request that OAH determine if District's response constitutes a separate due process complaint is also unnecessary, considering that OAH did not treat the response as a due process hearing request by assigning a case number, and there is no such thing as a "cross-complaint" in special education law. OAH declines to opine on whether such a response could support a District-filed claim.

For the reasons set forth above, Student's motion for clarification of District's response to the due process complaint is denied.

IT IS SO ORDERED.

DATE: February 24, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings