BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. VACAVILLE UNIFIED SCHOOL DISTRICT and SACRAMENTO CITY UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016031019 ORDER GRANTING MOTION TO DISMISS STUDENT'S ISSUE 5

On October 10, 2016, Vacaville Unified School District filed a motion to dismiss Student's Issue 5 of the First Amended Due Process Complaint, filed by Student on August 11, 2016. On October 12, 2016, Student filed an opposition. Sacramento City Unified School District did not file a response to Vacaville's motion.

APPLICABLE LAW

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).) The Office of Administrative Hearings has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

Section 1415(c)(2)(B)(ii) of the IDEA and California Education Code section 56502, subdivision (d)(2)(A) require a party receiving a complaint to send a response to the complaint to the filing party within 10 days after the receipt of the complaint. Further, within this ten day period, pursuant to Section 1415(f)(1)(B)(i)(I), for local education agencies that have not sent a prior written notice to the parent regarding the subject matter contained in the complaint notice, the local educational agency shall send to the parent a response that shall include:

a. An explanation of why the agency proposed or refused to take the action raised in the complaint;

b. A description of other options that the IEP Team considered and the reasons why those options were rejected;

c. A description of each evaluation procedure , assessment, record, or report the agency used as the basis for the proposed or refused action; and

d. A description of the factors relevant to the agency's proposal or refusal.

DISCUSSION

Student's Issue 5 of the first amended complaint asks OAH to determine whether Vacaville and Sacramento failed to adequately respond to Student's complaint. Vacaville moves to dismiss this issue, arguing this issue fails to state a claim over which OAH has jurisdiction. Student's Issue 5 does not relate to identification, evaluation, or educational placement of Student, or the provision of a FAPE to Student. Moreover, while the IDEA and Education Code section 56502 create the obligation of a local education agency to send a parent a response after a parent files a due process complaint, neither grants an administrative law judge the authority to order a local educational agency to file a response. This is in contrast to Section 1415(c)(2)(D) which requires an administrative law judge to evaluate the sufficiency of a due process complaint if a timely notice of insufficiency is filed. The IDEA and Education Code section 56502 do not provide OAH the authority to require the District to file a response. For these reasons, Vacaville's motion to dismiss Student's Issue 5 is granted for lack of jurisdiction.

IT IS SO ORDERED.

DATE: October 17, 2016

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DENA COGGINS
Administrative Law Judge
Office of Administrative Hearings