

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERRYESSA UNION SCHOOL
DISTRICT.

OAH CASE NO. 2011020617

ORDER GRANTING MOTION TO
DISMISS ISSUE

On February 17, 2011, Student filed this Due Process Hearing Request (complaint) against the Berryessa Union School District (District).

On March 15, 2011, District filed a motion to dismiss “Issue No. 2” in Student’s complaint on the ground that the Office of Administrative Hearings (OAH) lacks jurisdiction to hear the issue. Student did not file a response to District’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 OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Further, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code.

DISCUSSION

In his complaint, Student describes Issue No. 2 as “Discrimination (Medical Condition/Disability)”. Because Student presented no additional or supporting fact in the complaint relating to this issue, it is unclear whether or how this issue relates to the identification, evaluation, or educational placement of Student, or District’s responsibility to provide him with a FAPE. Such connection cannot be assumed.

Therefore, and because OAH’s jurisdiction is limited to disputes relating to the “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,” District’s motion to dismiss Issue No. 2 must be granted.

ORDER

1. Issue No. 2, in Student’s complaint dated February 17, 2011, is dismissed without prejudice.
2. Student may amend his complaint, and further clarify whether or how Issue No. 2 relates to the identification, evaluation, or educational placement of Student, or District’s responsibility to provide him with a FAPE.

IT IS SO ORDERED.

Dated: March 16, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings