

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011061010

ORDER PARTIALLY GRANTING
DISTRICT'S MOTION TO DISMISS
ISSUES FOUR AND FIVE OF
STUDENT'S COMPLAINT

BACKGROUND

On June 21, 2011, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Lincoln Unified School District (District) as the respondent.

On June 30, 2011, the District filed a joint motion to dismiss portions of Student's complaint and a notice of insufficiency as to Student's complaint.¹ In its motion to dismiss, the District asserts that issues four and five of Student's complaint are beyond the jurisdiction of the Office of Administrative Hearings (OAH). Student's issue four alleges that unnamed District personnel denied Student's father his parental rights as well as denied him his appeal rights and other civil liberties when they unprofessionally refused his request for documents and other writings. In issue five, Student alleges that the District's expulsion of him was an act of discrimination that also violated his rights under the No Child Left behind statute. For the following reasons, the District's motion to dismiss Student's issue four is partially granted and its motion to dismiss Student's issue five is granted in full.

DISCUSSION

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;

¹ The District's notice of insufficiency will be addressed in a separate order.

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.)

OAH does not have jurisdiction in special education matters to entertain claims based on federal statutes other than the IDEA. This includes, but is not limited to, any claims brought under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), civil rights claims brought under Title 42 United States Code section 1983, challenges brought under the Americans with Disabilities Act, or claims that a school district is not complying with the No Child Left Behind Act.

In issue four of his complaint, Student basically alleges that District staff members have acted unprofessionally by denying the request for copies of documents made by Student's father. Student alleges that his father's rights as a parent, his appeal rights, and his civil liberties have been violated as a result of this alleged failure to provide requested documents. Parents have a right to examine and copy their child's school records. (20 U.S.C. § 1415 (b)(1); Ed. Code, § 56504.) To the extent that Student alleges that his father's rights under the IDEA or the Education Code have been violated because of the District's alleged failure to provide documents to Student's father, OAH has jurisdiction over issue four. However, OAH does not have jurisdiction over any allegations that the appeal rights or civil liberties or other civil rights of Student's father have been violated. Therefore, any reference in issue four to the violation of appeal rights or civil liberties is dismissed.

In issue five, Student contends that the District's recommendation that he be expelled from school is an act of discrimination that denies him a right to a fair and equal education and violates the No Child Left Behind Act. Student also contends that discrepancies in his grades are acts of discrimination. All contentions in issue five address issues not contained within the IDEA or state education law, and are therefore beyond the jurisdiction of OAH. Issue five of Student's complaint is therefore dismissed in its entirety.

ORDER

1. The District's motion to dismiss issue four is partially granted as to allegations that the District's failure to provide documents to Student's father violated his civil liberties or appeal rights.

2. The District's motion to dismiss Student's issue five is granted in its entirety.

Dated: July 6, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings