

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLOVIS UNIFIED SCHOOL DISTRICT
AND FRESNO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011070758

ORDER GRANTING MOTION TO
DISMISS

On July 20, 2011, Parent on behalf of Student (Student) filed a due process hearing request (complaint) naming Clovis Unified School District (Clovis) and Fresno Unified School District (Fresno, as Respondents (Districts)).

On July 25, 2011, Clovis filed and served a Motion to Dismiss with Prejudice. Student did not file or serve an opposition.

Clovis maintains that Student's complaint does not state a cause of action under the Individuals with Disabilities Education Act (IDEA) within the jurisdiction of the Office of Administrative Hearings (OAH). For the reasons set forth below, Clovis's Motion to Dismiss is granted.

APPLICABLE LAW

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction to hear and resolve special education disputes under the IDEA. 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." (FAPE) (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.)

ANALYSIS

Student alleges that he, along with his sibling, have been enrolled in Clovis since August 2009. In December 2009 Parent relocated to Fresno. From December 2009 through June 2011 Student and his sibling were granted interdistrict transfers to remain enrolled in Clovis. Student alleges that after he was made eligible for special education at the close of the 2010-2011 school year, he was denied an interdistrict transfer. However, his sibling, who is not a special education pupil, was granted an interdistrict transfer. Student requests that he be allowed to continue his education in Clovis which is also near his day care. Student alleges that he is “aware” that Fresno offers the same services as Clovis, for special and general education pupils, but objects to the differential treatment being given to special education pupils requesting an interdistrict transfer.

Student’s complaint does not set forth a cognizable claim under the IDEA. Student does not set forth facts that would connect the denial of an interdistrict transfer to either District’s obligation to provide Student of a FAPE. On the contrary, Student concedes that Fresno offers the same services as Clovis. Student suggests that Districts discriminated against him as a special education pupil. However troubling his alleged disparate treatment might be to Parent, Student did not set forth any claims that fall within OAH’s jurisdiction to determine disputes under the IDEA. For this reason, District’s Motion to Dismiss is granted.

ORDER

Clovis Unified School District’s Motion to Dismiss is granted. The matter is dismissed.

IT IS SO ORDERED.

Dated: August 04, 2011

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings