

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011070832

ORDER GRANTING MOTION TO
DISMISS SECTION 504, FERPA AND
ATTORNEY FEES CLAIMS

On July 25, 2011, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) naming Irvine Unified School District (District) as the respondent.

On August 4, 2011, District filed a motion to dismiss issues related to the Family Educational Rights and Privacy Act (FERPA) and Section 504 of the Rehabilitation Act of 1973 and Student's proposed resolution number seven. District contends that OAH has no jurisdiction to entertain civil rights claims, FERPA compliance claims, or claims that attorney fees should be awarded. Student did not file opposition to the motion.

ANALYSIS

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.)

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.) and Section 1983 of Title 42 United States Code. Nor does OAH have jurisdiction to entertain claims raised under FERPA. Moreover, OAH lacks jurisdiction to make an award of attorney fees. Instead, at most, OAH decisions indicate the extent each party prevailed on the issues presented without reaching

the issue of whether to award attorney fees, or the amount. (See Ed. Code, § 56507, subd. (d).)

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, etc....); however, because special education law does not provide for a summary judgment procedure, OAH will not grant motions to dismiss that require determinations of disputed facts or issues.

Here, the complaint on its face alleges claims outside OAH jurisdiction. Specifically, that District violated Student's rights under Section 504 and FERPA. In addition, Student seeks reimbursement of attorney fees in proposed resolution number seven as part of a compensatory education award. District is correct that these claims and the requested remedy of attorney fees are outside OAH jurisdiction. Accordingly, to the extent any of the issues raised in the complaint seek relief under Section 504 or FERPA, District's motion to dismiss is granted. The motion is also granted as to Student's proposed resolution requesting OAH to award attorney fees as part of compensatory education.

ORDER

1. District's Motion to Dismiss issues under Section 504 and FERPA is granted;
2. District's Motion to Dismiss proposed resolution number seven regarding attorney fees is granted;
3. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

August 17, 2011

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings