

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. 2012050226

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On May 4, 2012, Student filed a Request for Due Process Hearing (complaint), naming Irvine Unified School District (District).

On May 14, 2012, District filed a “Partial Motion to Dismiss Elements of Issues 1-3” Due to Lack of Jurisdiction (Motion to Dismiss), alleging that each of Student’s issues for decision include some contentions that deal with issues outside Education Code section 56501(a) and the Office of Administrative Hearings (OAH) does not have jurisdiction over these issues. OAH received no response to the Motion to Dismiss from Student.

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.) 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.

DISCUSSION

In the present matter, Student alleges three claims, including contentions that District violated section 504 of the Rehabilitation Act of 1973 (Section 504) and the Civil Rights Act

under 42 U.S.C. § 1983 (Section 1983). OAH does not have jurisdiction to entertain claims based on Section 504 or Section 1983. OAH's jurisdiction is limited.

Student's Issue One alleges: District violated the IDEA, Section 504 and Section 1983 when it inappropriately exited Student from special education. Although issues related to a violation of Section 504 and Section 1983 are not within OAH's jurisdiction, the IDEA issue of exiting Student from special education is within OAH's jurisdiction. Accordingly, District's Motion to Dismiss allegations regarding Section 504 and Section 1983 in Issue One is granted and the allegations are dismissed.

Student's Issue Two alleges: District violated the IDEA, Section 504 and Section 1983 when it failed to develop a comprehensive IEP to address all of Student's needs. Although issues related to a violation of Section 504 and Section 1983 are not within OAH's jurisdiction, the IDEA issue of developing an appropriate IEP to address Student's needs is within OAH's jurisdiction. Accordingly, District's Motion to Dismiss allegations regarding Section 504 and Section 1983 in Issue Two is granted and the allegations are dismissed.

Student's Issue Three alleges: District violated the IDEA, Section 504 and Section 1983 when it committed a procedural violation by failing to: hold an annual IEP; apply eligibility criteria; respond to parent's written request to assess; provide prior written notice; include parent in as an equal partner in the IEP process; and, assure that District personnel have the training necessary to improve academic achievement of children with disabilities. Although issues related to a violation of Section 504 and Section 1983 are not within OAH's jurisdiction, the IDEA issue of whether District violated Student's procedural rights is within OAH's jurisdiction. Accordingly, District's Motion to Dismiss allegations regarding Section 504 and Section 1983 in Issue Three is granted and the allegations are dismissed.

ORDER

"District's Partial Motion to Dismiss Elements of Issues 1-3" related to a violation of Section 504 or Section 1983 is granted. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: May 31, 2012

/s/

CLARA L. SLIFKIN
Administrative Law Judge
Office of Administrative Hearings