

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENT ON BEHALF OF STUDENT,  v.  CLOVIS UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012070992
CLOVIS UNIFIED SCHOOL DISTRICT,  v.  PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012080216  ORDER GRANTING MOTION TO DISMISS ISSUES A AND B IN STUDENT’S COMPLAINT

On July 30, 2012, Student filed a Request for Due Process Hearing (complaint) against the Clovis Unified School District (District) in Office of Administrative Hearings (OAH) case number 2012070992.<sup>1</sup>

On August 13, 2012, the District filed a Motion to Dismiss Issues A and B because OAH did not have jurisdiction over Issue A, and Issue B was duplicative of Issues C and D. On August 16, 2012, Student filed an opposition as to Issue A, but conceded that Issue B is duplicative of Issues C and D.

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

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<sup>1</sup> On August 15, 2012, Student dismissed Issue E in his complaint.

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.) (Section 504) and Section 1983 of Title 42 United States Code (Section 1983).

## DISCUSSION

In Issue A, Student alleges that “District discriminated against Student solely on the basis of his disability by denying him access to the general education curriculum and segregating him in separate and unequal facilities.” The District contends that Issue A and the underlying facts in the complaint do not allege any violation by the District of the IDEA, while Student asserts that this issue relates to the District’s obligation to educate Student in the least restrictive environment.

While a school district’s failure to educate a child who requires special education services in the least restrictive environment is a denial of FAPE, Student does not allege such in Issue A. Issue A focuses on discrimination due to Student’s disability, more like a violation of Section 504 or Section 1983, and not whether the District denied Student a FAPE. Student could have alleged that the District violated Parent’s procedural rights because it predetermined Student’s placement because of its policy of not placing intellectually disabled students, like Student, in general education placements, which denied Student an educational benefit and/or significantly impeded Parent’s ability to meaningfully participate in the educational decision making process. (See *Student v. Fresno Unified School District* (August 3, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2012010705.) However, Student’s complaint focuses more on the policy behind the IDEA in educating students in the least restrictive environment, and not specific allegations whether the District denied Student a FAPE that due to his unique needs he could be educated in a general education classroom and did not require a functional life skills class. (See *Student v. Oakdale Joint Unified School District* (April 30, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2011120409.) Accordingly, the District’s motion to dismiss Issue A is granted because Student does not allege a claim that the District violated the IDEA that OAH has jurisdiction to decide.<sup>2</sup>

Regarding Issue B, as Student admits that this issue is duplicative of Issues C and D, and therefore the District’s motion to dismiss Issue B is granted.

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<sup>2</sup> Nothing in this order prevents Student from filing an amended complaint to allege a violation of the IDEA over which OAH has jurisdiction to determine.

ORDER

1. The District's Motion to Dismiss Issues A and B is granted.
2. The matter will proceed as scheduled as to Issue C and D.

Dated: August 17, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings