

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANZANITA ELEMENTARY SCHOOL  
DISTRICT.

OAH CASE NO. 2012090766

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS

On September 24, 2012, Parent, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a request for a due process hearing (complaint). On October 3, 2012, the District filed a motion to dismiss Student's complaint. On October 8, 2012, Student filed an opposition to the District's motion to dismiss.

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.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides.

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.).

### DISCUSSION AND ORDER

In his complaint Student claims that he was denied a FAPE for the 2011-2012 school year (SY) and the 2012-2013 SY. He provides a number of alleged facts to support this claim. He also claims that the District violated section 504 and discriminated against him.

The District first attempts to have OAH dismiss Student's claim that he was denied a FAPE by attempting to contradict Student's allegations in the complaint with its own allegations. In essence, what the District is doing is making a motion for summary judgment and seeking a ruling on the merits. Since there is no provision in special education law for a motion for summary judgment when the matter is before an administrative tribunal, the motion to dismiss is denied as to this ground.

The District then argues that Student is the resident of another school district, and he is currently attending school in that District. Although Student previously attended school in the District pursuant to an inter-district transfer, the District denied Student's application for an inter-district transfer for the 2012-2013 SY. Because Student is not entitled to attend school in the District, the District argues that it is not responsible for Student's education for the 2012-2013 SY. In his opposition, Student contends that his claim for denial of a FAPE for the 2012-2013 SY was a "typographical error," and he is not making any claim for a denial of FAPE for the 2012-2013 SY. Accordingly, any apparent claim in the complaint related to the 2012-2013 SY is dismissed.

Finally, The District makes another argument on the merits in its quest to have Student's section 504 claim dismissed. OAH cannot grant this apparent motion for summary judgment relating to this claim. However, because OAH does not have jurisdiction over 504 claims, it is dismissing this claim *sua sponte*.

1. The District's motion to dismiss is granted in part and denied in part. Claims relating to the 2012-2013 SY, to the extent they exist in the complaint, are dismissed. In addition, Student's section 504 claim is dismissed.

2. All dates shall remain as currently set.

IT IS SO ORDERED.

Dated: October 12, 2012

/s/  
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REBECCA FREIE  
Administrative Law Judge  
Office of Administrative Hearings