

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. 2013040071

ORDER DENYING DISTRICT'S
MOTION TO DISMISS EXPEDITED
COMPLAINT IN ITS ENTIRETY AND
GRANTING DISTRICT'S MOTION TO
PARTIALLY DISMISS CLAIMS
OUTSIDE OF OAH JURISDICTION

On March 29, 2013, Parents on Student's behalf filed a request for due process hearing (complaint) naming the Irvine Unified School District (District). The complaint included a request for an expedited hearing.

On April 8 and 9, 2013, District filed five motions, including a motion to dismiss Student's expedited complaint in its entirety, and a motion to partially dismiss the claims in Student's complaint that District's conduct violated Student's rights under the Rehabilitation Act, the Civil Rights Act under 42 U.S.C. Section § 1983, the No Child Left Behind Act and unspecified "related" laws. District did not support the motions with any authenticated evidence or a declaration under penalty of perjury. Student filed an opposition to District's motion to dismiss the expedited complaint which was supported by exhibits and a declaration under penalty of perjury from Student's attorney.

This Order only addresses the motion to dismiss and the motion to partially dismiss. District's other motions will be addressed under separate orders.

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 grant

motions for summary judgment. 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 1983 of Title 42 United States Code, or the No Child Left Behind Act of 2001 (20 U.S.C. § 6301).

Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction, e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc. . . . , OAH will not dismiss claims that have otherwise been properly pleaded. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing.

DISCUSSION AND ORDER

First, District's motion to dismiss the expedited complaint in its entirety as outside of OAH jurisdiction is not limited to matters that are facially outside of OAH jurisdiction, but instead also seeks a ruling on the merits of those claims that are within OAH jurisdiction. District fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication of an issue prior to giving a petitioner the opportunity to develop a factual record at hearing.

Student's Issue 1 in the complaint alleges that District failed to conduct a manifestation determination before referring Student to a School Attendance Review Board (SARB) hearing regarding truancy. That claim entitles Student to an expedited hearing under Title 20 section 1415(k), which is within OAH jurisdiction. Student's Issue 2 alleges that District denied Student FAPE under the IDEA, which is also within OAH jurisdiction and entitles Student to a due process hearing. Those claims are not appropriate for summary dismissal and require findings made by the hearing judge after the parties have presented evidence.

However, as to those claims in Student's complaint based upon Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, or the No Child Left Behind Act of 2001 (20 U.S.C. § 6301), District is correct that those claims facially fall outside of OAH jurisdiction. Student has not opposed dismissal of those claims. Because OAH has no jurisdiction over those claims, all claims in the complaint based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, or the No Child Left Behind Act of 2001 (20 U.S.C. § 6301) shall be stricken from the complaint and dismissed.

ORDER

1. District's motion to dismiss Student's expedited complaint in its entirety is denied.

2. District's motion to dismiss claims arising under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, or the No Child Left Behind Act of 2001 (20 U.S.C. § 6301) is granted. Those claims are stricken and dismissed from the complaint as outside of OAH jurisdiction. The matter shall proceed to hearing on the remaining issues as defined in this order.

3. The expedited and non-expedited hearing dates in this matter shall remain as scheduled, unless otherwise ordered.

Dated: April 15, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings