

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009050452

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT
MOTION TO DISMISS

On May 11, 2009, Parent filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student (Student) naming Los Angeles Unified School District (District) as the respondent.

On May 28, 2009, OAH issued an Order of Sufficiency on Student's complaint finding Issues One, Two, Five and Six sufficient. Having been given leave to amend Issues Three and Four, Student has failed to submit an amended complaint; therefore, pursuant to the May 28, 2009 Order, Issues Three and Four are dismissed.

On June 11, 2009, Donald A. Erwin, Esq., filed on behalf of District a motion to dismiss due to lack of jurisdiction of OAH. OAH has received no response from Student to 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.)

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].

DISCUSSION

In the present matter, the District contends OAH does not have jurisdiction to hear this matter as none of Student's listed issues falls under the IDEA or involve a dispute of a FAPE.¹

The District contends that Student has not alleged that he is a student who is eligible for special education and related services. Prior determination of eligibility is not a requirement in every due process request, as is evidenced by the laws which govern child find and initial assessments. Although Student has not been deemed eligible for special education, Student alleges that the District has refused to assess Student despite her requests for assessment as well as her request for special education services in the form of alternate placement, resource specialist services, and counseling. Determination of the District's procedural obligations and potential denial of FAPE remain triable issues, well within the jurisdiction of OAH. As such, the core issues of Student's complaint cannot be dismissed.

Student's complaint, however, also references areas which are clearly outside the jurisdiction of OAH. Specifically, OAH has no jurisdiction to make determinations regarding 504 claims, and any such claim must be dismissed. It is noted, however, that although Student's complaint alleges that Parent requested a 504 Plan, the complaint does not request that OAH order the District to provide such a plan. Instead, Student is alleging a denial of FAPE, in the alleged discouragement of filing, and the District's alleged failure to provide resource services and counseling. Again, these issues are within the jurisdiction of OAH and provide and require findings at hearing. Student's complaint also references alleged District failures regarding Student's sister. This complaint has been filed on behalf of Student only, and therefore OAH has no jurisdiction over issues involving Student's sister. Student's request for assessment and services on behalf of Student's sister must be dismissed from Student's complaint.

ORDER

GOOD CAUSE APPEARING, the District's Motion to Dismiss is granted as to any claim for relief under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

All issues and claims regarding Student's sister are dismissed without prejudice from this action.

The matter will proceed as scheduled as to the remaining issues.

1. It is noted that in making its order herein, the ALJ is reviewing Student's complaint as a whole.

It is so ordered.

Dated: June 17, 2009

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings