

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ANTELOPE VALLEY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2010030678

ORDER GRANTING MOTION TO
DISMISS

On March 9, 2010, Student's parents acting on behalf of Student (Student), filed a due process hearing request naming the Antelope Valley Union High School District (District) as the respondent. The due process request alleges that the District has violated Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and the Unruh Civil Rights Act.

On April 28, 2010, a telephonic conference call was held before Administrative Law Judge Susan Ruff, Office of Administrative Hearings, State of California (OAH). Edward Burg, Esq., and Jessica Shpall, Esq., appeared on behalf of Student and Student's parents. Bridget Cook, Esq., appeared on behalf of the District.

The District made a motion to dismiss Student's due process request on the basis that OAH lacks jurisdiction to decide the claims alleged in that due process request.

In response to the District's motion, Student's counsel explained that Student has filed this action to be certain that Student has exhausted all administrative remedies available under the Individuals with Disabilities Education Act (IDEA). Student does not currently have an individualized education program (IEP), nor is Student seeking to be found eligible for special education and related services under an IEP.

APPLICABLE LAW

The purpose of the 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, the Americans with Disabilities Act, or the Unruh Civil Rights Act.

DISCUSSION

Student's due process hearing request contains no allegations which come within the jurisdiction of a special education due process proceeding before OAH. The motion to dismiss is properly granted.

ORDER

The District's motion to dismiss this case is granted. The matter is hereby dismissed.

Dated: April 28, 2010

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings