

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND MONTEBELLO
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010081068

ORDER GRANTING MOTION TO
DISMISS

On August 27, 2010, Benjamin Conway, attorney for Student, filed a Request for Due Process Hearing (complaint), against the Los Angeles Unified School District (Los Angeles) and the Montebello Unified School District (Montebello). On September 7, 2010, Karen E. Gilyard, attorney for Montebello, filed a Motion to Dismiss alleging that the Office of Administrative Hearings (OAH) lacks jurisdiction over claims raised in Student's complaint. OAH received no response from Student or Los Angeles.

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 (Section 504) (29 U.S.C. § 701 et seq.); the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.); the Unruh Civil Rights Act (Unruh Act)

(Civ. Code, § 51 et seq.); the equal protection clause of the United States and California Constitutions; or Education Code sections 200, 201, 262.3 and 32261, which address rights to be free from discrimination and ensure safety on school campuses.

DISCUSSION

Student's complaint alleges four problems for resolution. Problem No. 1 raises multiple factual allegations that form the basis of alleged denials of FAPE against Los Angeles. Problem No. 2 raises multiple factual allegations that form the basis of alleged denials of FAPE against Montebello. Student's Problem No. 3 incorporates by reference all of the allegations in Problem Nos. 1 and 2. Problem No. 3 asserts that Los Angeles and Montebello engaged in a pattern of behavior that violated Student's rights under Section 504, the ADA, the Unruh Act, the equal protection clause of the United States and California Constitutions and Education Code sections 200, 201, 262.3 and 32261. Montebello moves to dismiss claims incorporated into or raised in Problem No. 3. Problem No. 4 is a list of proposed resolutions and is not subject to Montebello's motion to dismiss.

OAH's jurisdiction is limited to matters involving the 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. OAH lacks jurisdiction to hear claims raised in Problem No. 3. Accordingly, Problem No. 3 is dismissed.

ORDER

1. Montebello's Motion to Dismiss is granted.
2. Student's Problem No. 3 is dismissed in its entirety.

Dated: September 15, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings