

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011030198

ORDER GRANTING MOTION TO
DISMISS PORTIONS OF STUDENT'S
COMPLAINT

On February 28, 2011, Parent on behalf of Student (Student), filed a Request for Due Process Hearing (complaint), naming Temecula Valley Unified School District (District) as the respondent.

On March 7, 2011, the District filed a Motion to Dismiss Portions of the Complaint alleging that matters involving Section 504 of the Rehabilitation Act of 1973 and the Civil Rights Act under Title 42 of the United States Code, are outside the jurisdiction of the Office of Administrative Hearings (OAH).

OAH received no response to the Motion to Dismiss from Student.

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.) or Section 1983 of Title 42 of the United States Code.

DISCUSSION

In the present matter, Student has included claims under both Section 504 of the Rehabilitation Act of 1973 and the Civil Rights Act under Title 42 of the United States Code. These claims are outside the jurisdiction of OAH. Therefore, all reference to Section 504 of the Rehabilitation Act of 1973, and the Civil Rights Act under Title 42 of the United States Code shall be dismissed from Student's complaint, and the complaint shall proceed on Student's claims and allegations of violation of the IDEA and related educational violations only.

ORDER

1. The District's Motion to Dismiss those portions of Student's complaint alleging violations of Section 504 of the Rehabilitation Act of 1973, and the Civil Rights Act under Title 42 of the United States Code are dismissed.

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

IT IS SO ORDERED.

Dated: March 14, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings