

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT AND RIVERSIDE COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2011031369

ORDER DENYING MOTION TO
DISMISS

On March 25, 2011, Parent on behalf of Student filed a Request for Due Process Hearing (complaint), naming the Val Verde Unified School District (District) and the Riverside County Office of Education (County) as the respondents. On April 1, 2011, the District and County filed a joint Motion to Dismiss that portion of Student’s complaint relating to claims involving “the Constitution, Americans With Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504) and all other federal laws unrelated to 20 U.S.C. section 1400 et. seq., including but not limited to 42 U.S.C., Sec. 1983,” as beyond the jurisdiction of the Office of Administrative Hearings (OAH). On April 5, 2011, Student filed an opposition to the 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.) or Section 1983 of Title 42 United States Code.

DISCUSSION

The District is correct in pointing out that OAH does not have jurisdiction to decide issues relating to claims involving “the Constitution, Americans With Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504) and all other federal laws unrelated to 20 U.S.C. section 1400 et. seq., including but not limited to 42 U.S.C., Sec. 1983. Student’s complaint, however, does not require OAH to decide any issues outside of its IDEA jurisdiction. Student’s sole issue references only the District’s alleged denial of FAPE under the IDEA. Further, although Student references Section 504 and other federal statutes, those references are specifically contained within the phrase...”insofar as such relief is also available under the IDEA...” Student is not seeking adjudication or relief outside the IDEA, therefore the District/County Motion to Dismiss is denied.

ORDER

The District/County’s Motion to Dismiss is denied.

IT IS SO ORDERED.

Dated: April 06, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings