

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANZANITA ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2011050901

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

Student filed a Due Process Request on May 23, 2011, alleging that during the 2010-2011 school year, when Student was enrolled in the District, it denied him a FAPE by failing to assess in all areas of suspected disability, failed to complete assessments in a timely manner, failed to offer him an IEP with supports and related services, and failed to conduct a manifestation determination.

District filed a Motion to Dismiss on June 1, 2011, alleging that Student was not a Student enrolled in its District. It alleges it did not violate section 504 because Student didn't qualify for services. It alleges that it had no duty to assess Student because at the present time, he does not live within their District. District alleges OAH has no jurisdiction over Student's case.

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

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

District's factual contention regarding Student's residence does not justify dismissal. Student alleged that he was validly enrolled in the District on an interdistrict transfer, and that during that time, the District committed several violations of the IDEA regarding matters involving a proposal or refusal to initiate or change the identification, assessment, or educational placement of a child and the provision of a FAPE to a child. Student alleged that District refused to assess Student, and later began to assess Student for eligibility when it expelled him without a manifestation determination, and then improperly terminated its assessment of Student. District's motion to dismiss contends that District had no duty to provide Student a FAPE unless he was validly enrolled. Because whether Student was validly enrolled in District, and when, is a factual question that can only be resolved at hearing, District's motion to dismiss on this ground must be denied.

As to the Section 504 claims, OAH will dismiss issues that are facially outside the jurisdiction of an IDEA due process hearing. Thus, because Section 504 claims are outside of OAH's jurisdiction, Student's claims under that law must be dismissed.

ORDER

1. District's Motion to Dismiss Student's Section 504 claims is granted.
2. District's Motion to Dismiss the remainder of the complaint is denied.
3. The matter shall proceed as scheduled.

Dated: June 06, 2011

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings