

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PASO ROBLES JOINT UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011070195

ORDER GRANTING MOTION TO  
DISMISS

On July 06, 2011, Student filed a Request for Mediation and Due Process Hearing (complaint), naming Paso Robles Unified School District (District) as the respondent.

On July 19, 2011, District filed a 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 protecting the rights of children with disabilities...” as beyond the jurisdiction of the Office of Administrative Hearings (OAH). On July 19, 2011, Student filed an opposition to the Motion to Dismiss.

APPLICABLE LAW & DISCUSSION

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.

The complaint makes a claim for relief for denial of a free appropriate public education (FAPE) under the IDEA, as well as any and all relief available for District's violation of the "Constitution, the Americans With Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 [29 USCS §§ et seq.] (Section 504) and all other federal laws protecting the rights of children with disabilities, insofar as such relief is also available under the IDEA, to the extent as if actions for violations of those statutes been brought pursuant to the procedures under subsections (f) and (g) of 20 U.S.C. § 1415 (*sic*)". Student contends the motion should be denied because Student is not seeking adjudication or relief outside of the IDEA.

Student relies on an interim order denying a District's motion to dismiss on similar grounds in *Parent v. Val Verde USD and Riverside COE*, OAH Case No. 2011031369 (April 6, 2011) Though prior administrative decisions are instructive they are not binding precedent. (Cal. Code Regs. tit. 5, § 3085.) As discussed above, OAH has no jurisdiction to entertain any of the constitutional or civil rights claims alleged by Student. Accordingly, to the extent that Student requests relief under other federal laws outside of the IDEA, those claims are subject to dismissal. Thus, any and all claims in the complaint for relief for violation of the Constitution, the Americans With Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 [29 USCS §§ et seq.] (Section 504) and generically all other federal laws protecting the rights of children with disabilities are dismissed.

#### ORDER

1. District's Motion to Dismiss is granted as to any and all claims for relief not available under the IDEA for violation of the Constitution, the Americans With Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 [29 USCS §§ et seq.] (Section 504) and all other federal laws protecting the rights of children with disabilities.
2. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Dated: July 22, 2011

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings