

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CUPERTINO UNION SCHOOL
DISTRICT.

OAH CASE NO. 2011070771

ORDER DENYING MOTION TO
DISMISS ISSUE ONE

On July 21, 2011, Parents, on behalf of Student, filed a Due Process Hearing Request¹ (complaint) naming Cupertino Union School District (District). Student complaint was amended on August 12, 2011 and September 5, 2011 (second amended complaint), following OAH's determination of sufficiency of the complaint.

On September 15, 2011, District filed a motion to dismiss Issue One of Student's second amended complaint. No response has been received from Student to the motion.

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

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

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 over non-IDEA claims. These include claims alleging violations of a Student's civil rights, violations of Section 504 of the 1973 Rehabilitation Act (Section 504) or violations of the Americans with Disabilities Act.

DISCUSSION AND ORDER

Student's Issue One alleges that District violated his First Amendment rights under the United States Constitution when it forced him to eat meat over his Parents' objections, based upon their religious beliefs. District contends that OAH lacks jurisdiction to hear Student's claims in Issue One. On September 20, 2011, in a separate order, OAH found Issue One of Student's second amended complaint to be insufficiently pled. Student was granted 14 days to file an amended complaint. Accordingly, District's motion to dismiss Issue One of Student's second amended complaint is denied as moot.

IT IS SO ORDERED.

Dated: September 21, 2011

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings