

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAGUNA BEACH UNIFIED SCHOOL
DISTRICT AND SADDLEBACK VALLEY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011070983

ORDER GRANTING AND DENYING
IN PART SADDLEBACK VALLEY
USD MOTION TO DISMISS

On August 17, 2011, Saddleback Valley Unified School District (Saddleback) filed a motion to dismiss those portions of Student’s request for due process hearing (complaint) involving allegations related to Section 504 and 42 United States Code section 1983, and proposed remedies of prospective placement in New Vista School. Neither Student nor Laguna Beach Unified School District filed an opposition or reply to Saddleback’s motion.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure. Here, Saddleback’s motion is not limited to matters that are facially outside of OAH jurisdiction. Therefore, each of Saddleback’s requests for dismissal will be considered separately below.

Request for relief under Section 504 and 42 U.S.C. §1983

Saddleback contends that the only allegation against it is contained in Student’s Issue 1B, which states “Petitioner contends that the District (Saddleback) violated IDEA, Section 504 of the Rehabilitation Act of 1973, the Civil Rights Act under 42 U.S.C. § 1983, and denied FAPE under both IDEA and § 504 and related special education state and federal laws, when it failed to conduct and advise Petitioners of their rights given Student’s attendance at a private school within the boundaries of the Saddleback Valley USD.” It is further noted, however, that each Issue raised by Student contains an allegation of violation of Section 504 and 42 United States Code section 1983.

APPLICABLE LAW AND DISCUSSION

The Office of Administrative Hearings (OAH) has limited jurisdiction to hear issues arising out of the IDEA and related California law which provide a parent who disagrees with the child's educational placement, 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(a).) 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. Therefore, all references to Section 504 of the Rehabilitation Act of 1973 and Section 1983 of Title 42 United States Code as contained in Student's complaint are dismissed and stricken from each of Student's issues.

Proposed remedy of prospective placement at New Vista School

Student's Proposed Resolution No. 3 is a request for "an order whereby the District must reimburse parents for all cost related to private prospective placement for the 2011/2012 school year, including but not limited to tuition, fees and transportation to New Vista School."¹ It is undisputed that New Vista School is a private school and is not certified by the California Department of Education or recognized as a certified non-public school.

APPLICABLE LAW AND DISCUSSION

An ALJ may not render a decision that results in the placement of an individual with exceptional needs in a non-public, non-sectarian school...if the school has not been certified (by the California Department of Education) pursuant to Section 56366.1.(Ed. Code § 56505.2, subd. (a).) As indicated above, it is clear that New Vista School is not a certified non-public school. Had Student's issues and alleged violations been limited to placement, and solely sought a prospective private placement, then Saddleback's contention might have merit. Student, however, has presented many issues alleging numerous violations of the IDEA and parallel state law, which seek a variety of compensatory remedies, including reimbursement for continuing placement at New Vista School.

Courts and hearing officers are empowered to "grant such relief as (they) determine is appropriate." (34 C.F.R 300.516 (c)(3); *Burlington Sch. Comm. v. Massachusetts Dept. of Educ.* (471 U.S. 359 (1985).) Compensatory education is an award of education services which are offered prospectively to compensate for a previously inadequate program. (*Reid v. District of Columbia* 401 F.3d 516 (D.C. Cir. 2005).) Further, courts and hearing officers have a broad discretion to determine appropriate compensatory remedies, including

¹ Student's reference to "the District" is in generic form, therefore it is assumed the proposed resolution is applicable to both Saddleback and Laguna Beach USD.

provisions for current compensatory education, as well as compensatory education to be provided in the future.

Tuition reimbursement provides a parent with reimbursement for expenses incurred for the unilateral placement of their child in a proper placement following a district's improper placement (*Burlington, supra*, 471 U.S. 359.) Further, a parental placement may be found to be appropriate by a hearing officer or court even if it does not meet the state standards that apply to education provided by the state educational agency (SEA) or local educational agency (LEA). (34 C.F.R. 300.148 (c).)

Compensatory education may serve as an appropriate equitable remedy when a District has failed to provide a child with a disability with an appropriate education as required by the IDEA. As a result, the particular form of a compensatory education award will vary from case to case, and will be based upon the ALJ's determination of facts. Although nothing in the law requires an ALJ to make an award of private education reimbursement, nothing prevents it either. Regardless, determination of an appropriate compensatory remedy requires that factual determinations be made at hearing. Therefore, Saddleback's request to dismiss Student's requested resolution of prospective placement at New Vista School is denied.

ORDER

1. Saddleback Valley Unified School District's request to dismiss all references to Section 504 of the Rehabilitation Act of 1973 and Section 1983 of Title 42 United States Code as contained in Student's complaint is granted. All such references are stricken from Student's complaint.

2. Saddleback Valley Unified School District's request to dismiss Student's proposed remedy for prospective placement at New Vista School is denied.

IT IS SO ORDERED.

Dated: August 26, 2011

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings