

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAGUNA BEACH UNIFIED SCHOOL
DISTRICT; SADDLEBAK VALLEY
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011070983

ORDER PARTIALLY GRANTING
AND PARTIALLY DENYING
LAGUNA BEACH UNIFIED SCHOOL
DISTRICT'S MOTION TO DISMISS

On August 26, 2011 Laguna Beach Unified School District (LBUSD) filed a Motion to dismiss those portions of Student's request for due process hearing (complaint) involving allegations related to Section 504 and title 42 United States Code section 1983, and proposed remedies of prospective placement in New Vista School. Student did not file an opposition to LBUSD's motion.

On August 17, 2011, Saddleback Valley Unified School District filed a motion to dismiss on the same grounds. OAH issued an order on August 26, 2011, partially granting and partially denying the motion. In particular, the order dismissed and struck "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 from each of Student's issues."

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

The jurisdiction of the Office of Administrative Hearings (OAH) is limited to issues arising out of the IDEA and related California law. Specifically, OAH jurisdiction extends 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.

LBUSD contends that Student's Issue 1B and the Summary of Issue Statements and Proposed Resolutions allege that LBUSD violated Section 504 of the Rehabilitation Act of 1973 and the Civil Rights Act under 42 U.S.C. § 1983. LBUSD also contends that such claims are outside of OAH's jurisdiction and seeks dismissal of those claims. LBUSD is correct, such that 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 will be 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 Student has also 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. LBUSD argues that New Vista School is a private school and is not certified by the California Department of Education (CDE) or recognized as a certified non-public school (NPS). However, notwithstanding the absence of any opposition from Student, LBUSD did not file a declaration under penalty of perjury or provide any evidence supporting its argument.

Courts and hearing officers have a broad discretion to determine appropriate compensatory remedies, including provisions for current compensatory education, as well as compensatory education to be provided in the future. Courts and hearing officers are empowered to "grant such relief as (they) determine is appropriate." (34 C.F.R 300.516 (c)(3) (2006); *School Committee of the Town of Burlington, Massachusetts v. Department of Education* (1985) 471 U.S. 359, 369 [105 S.Ct. 1996, 85 L.Ed.2d 385].) Compensatory education is an award of education services which are offered prospectively to compensate for a previously inadequate program. (*Reid v. District of Columbia* (D.C. Cir. 2005) 401 F.3d 516, 524.)

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. at p. 370.) 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) (2006).) However, 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).)

Here, although the hearing ALJ will not be able to prospectively award placement in an uncertified private school, determination of an appropriate compensatory remedy requires that factual determinations be made at hearing. Therefore, LBUSD's request to dismiss Student's requested resolution of prospective placement at New Vista School is denied at this time.

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.

ORDER

1. Consistent with the August 26, 2011 OAH order granting Saddleback Unified School District's motion to dismiss the same allegations, LBUSD'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.

2. LBUSD's request to dismiss Student's proposed remedy for prospective placement at New Vista School is denied.

IT IS SO ORDERED.

Dated: September 13, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings