

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011090321

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS

On, September 8, 2011, Maureen R. Graves filed on behalf of Student a Request for Due Process Hearing (complaint), naming the Irvine Unified School District (District) as the respondent.

On September 19, 2011, S. Daniel Harbottle, Attorney at Law filed on behalf of District a Motion to Dismiss, alleging that Issue No. 5 of Student's complaint is unintelligible and that issues of alleged threats and coercion are not issues properly brought before the Office of Administrative Hearings (OAH). District also moves to dismiss Issue No. 15 wherein Student alleges a violation Section 504.

On September 20, 2011, Student filed a response to District's Motion to Dismiss; on September 26, 2011, Student filed a corrected response and asked that it replace the September 20, 2011 response.

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 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 (Section 504). (29 U.S.C. § 701 et seq.)

### DISCUSSION

District argues that Issue No. 5 must be dismissed because it is outside the jurisdiction of OAH as it does not pertain to the issue of identification, evaluation, educational placement, or FAPE. Issue No. 5 as presented in Student's complaint states:

“The District is using the threat of an even more restrictive placement in English and language arts, and perhaps also a threat to deny needed supports in general education social studies, in an improper attempt to induce [Student's] mother to accept the overly restrictive placement it proposed yesterday.”

According to information presented in Student's complaint, the alleged threats occurred during the IEP team meeting and may constitute a procedural error if the event significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to her child, or causes a deprivation of educational benefits. While Student's phrasing could be clearer, Student has asserted a claim that pertains to the educational placement and services of Student, as well as potential infringement upon parental participation. Accordingly, District's Motion to Dismiss Issue No. 5 is denied.

Issue No. 15 alleges that District has violated Student's rights under Section 504. District argues that OAH does not have jurisdiction to hear this claim. Student in his response states that Issue No. 15 was raised in order to exhaust administrative remedies and Student is aware that Issue No. 15 is not within the jurisdiction of OAH. Accordingly, District's Motion to Dismiss Issue No. 15 is granted.

### ORDER

1. District's Motion to Dismiss is denied as to Issue No. 5.
2. District's Motion to Dismiss is granted as to Issue No. 15. The matter will proceed as scheduled as to the remaining issues.

Dated: September 27, 2011

/s/  
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MICHAEL G. BARTH  
Administrative Law Judge  
Office of Administrative Hearings