

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. 2012010599

ORDER DENYING IN PART, AND
GRANTING IN PART, MOTION TO
DISMISS

On January 23, 2012, Student filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint) naming Irvine Unified School District (District) as the respondent.

On January 31, 2012, District filed a motion to dismiss the allegations of Student's complaint asserting (i) District violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and (ii) District violations of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.) after February 7, 2011. Student filed reply on February 2, 2012.

Section 504 Claim

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*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. Therefore, the motion to dismiss Allegation #2 of the complaint, Student's claim under Section 504, is granted.

Claims under the IDEA

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 a procedure for dismissal of all or a portion of the claims based upon the merits.

Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Allegations #1A through #1M of Student's complaint raise claims reaching back two years for District's failure to provide

Student with a free and appropriate public education (FAPE) under the IDEA. Although the complaint alleges that on February 4, 2011, Parent withdrew in writing her consent to District's provision of special education services to Student, which is characterized in Student's complaint and reply as unilateral private placement subject to reimbursement, the District's motion is based on additional facts in the moving papers asserting post-revocation compliance on February 7, 2012, with the prior written notice requirements of Title 34 Code of Federal Regulations § 300.503, which District contends absolved it of any further obligation to provide Student with a FAPE.

Whether Parent withdrew consent for special education and related services or made a unilateral private placement, and whether District gave proper prior written notice of discontinuation of special education and related services, are factual issues for determination at the hearing. Accordingly, the motion to dismiss all allegations pertaining to the period from February 7, 2011 to present is denied. The proper place for District to raise this factual defense is at hearing.

ORDER

1. District's motion to dismiss Student's claims under Section 504 of the Rehabilitation Act of 1973 is granted.
2. District's motion to dismiss that portion of Student's claims under the IDEA pertaining to the period from February 7, 2011, to the present is denied.
3. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: February 03, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings