

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:  PARENT ON BEHALF OF STUDENT,  v.  IRVINE UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012030279 (Primary)
IRVINE UNIFIED SCHOOL DISTRICT,  v.  PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011100415  ORDER GRANTING MOTION TO DISMISS ISSUES

On October 11, 2011, the Irvine Unified School District (District) filed a request for due process (complaint) in Office of Administrative Hearings (OAH) case number 2011100415 naming Student (First Case). Student filed his complaint on March 6, 2012 naming District as respondent (Second Case). OAH assigned case number 2012030279 to Student's case. OAH issued an order consolidating the cases on March 16, 2012.

On March 16, 2012, District filed a motion to dismiss claims alleged in Student's complaint under the "U. S. Constitution, the American with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 [29 USCS §§ 790 et seq.] (Section 504), and all other Federal laws protecting the rights of children with disabilities, insofar as such relief is available under the IDEA" (sic). District's motion is brought on grounds that OAH lacks jurisdiction to decide these matters. Student filed a request for extension of time to March 27, 2012 to file a response on the grounds that Student's counsel has been out of town from March 19, 2012 to March 23, 2012 trying a matter before OAH in case no. 2011070195 and would not be available to provide a more timely response before March 27, 2012. Student filed opposition to the motion on March 26, 2012.

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 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.....), because 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.) the U.S. Constitution, Section 1983 of Title 42 United States Code, or the Americans With Disabilities Act of 1990.

## DISCUSSION

In his opposition, Student asserts that title 20 United States Code section 1415(f) and (g) of the IDEA is intended to make clear that Student will have exhausted all of his administrative remedies in an IDEA hearing before pursuing any claims in violation of civil rights laws. Student contends therefore that OAH has jurisdiction to hear and decide a Section 504 violation claim in an IDEA due process hearing before OAH. Student cites title 20 United States Code section 1415(l)<sup>1</sup> and *Mark H. v. Lemahieu* (9th Cir 2008) 513 F.3d 922 (*Mark H.*) in support of his position. Neither authority is helpful to Student in the present case.

First, the exhaustion of remedies requirement under title 20 United States Code section 1415(l) does not require Student to bring all of his *claims* under all possible civil rights laws in an IDEA hearing, but instead states that to the extent the same *relief* is sought, Student should seek that relief under the IDEA in an IDEA hearing. The section on its face recognizes that a student may have claims and remedies available that are outside of IDEA.

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<sup>1</sup> Title 20 United States Code section 1415(l) provides that nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required under this subchapter.

Second, in *Mark H.*, parents sued the Hawaii Department of Education (DOE) and various school officials in the United States District Court for money damages for alleged violations of the IDEA and Section 504. The District Court granted DOE's motion for summary judgment holding, among other things, that under the doctrine of sovereign immunity there was no right, procedures or remedies available under Section 504 for violations of the IDEA's affirmative obligations and DOE's Section 504 regulations are not enforceable through a private right of action. On appeal, the Ninth Circuit held that the availability of remedies under the IDEA would not limit availability of damages under the Rehabilitation Act. The court reversed and remanded the case back to the District court to give appellants an opportunity to amend their complaint to specify which Section 504 regulations they allege were violated and which supported a privately enforceable right of action..

As stated above, the holding in *Mark H.* does not support Student's argument. There the appellate court focused on the relationship between IDEA and the regulations implementing Section 504. The court compared and contrasted the two noting that IDEA requires, among other things, that states accepting funds under the Act provide disabled children with a "free appropriate public education" (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. In contrast, Section 504 requires that disabled individuals not "be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity" that receives federal funds. The court noted further that the DOE regulations implementing Section 504 include a requirement that disabled children in schools receiving federal funds be provided a FAPE. The court noted that the Section 504 regulations and the IDEA FAPE requirements are overlapping but different and distinct because the IDEA focuses on the provision of FAPE in public education to disabled children while Section 504 more broadly addresses the provision of state services to disabled or handicapped individuals for which there exists a private right of action for prospective relief and compensatory damages.

What Student fails to appreciate is that nothing in the IDEA or any other federal statute mandates that the individual states provide simultaneous due process hearings for IDEA claims and Section 504 claims. The IDEA regulations themselves do not require an independent body like OAH to conduct IDEA hearings, but leave it to the states to determine how to meet the IDEA hearing requirements. (See 34 C.F.R. § 300.511(b).)

In California, the California Department of Education (CDE) has contracted with OAH only to hear and decide IDEA claims. (See Interagency Agreement Between OAH and CDE, July 1, 2011 to June 30, 2014, section A, "General Scope".) OAH is not part of the judicial branch and absent a contractual relationship with a state agency, has no independent jurisdiction to apply Section 504 or any other federal law. On their face, the Education Code sections under which OAH conducts mediations and holds hearings are limited to the IDEA. (See Ed. Code, §§ 56000, subd. (d) [stating that legislative intent of Ed. Code, § 56000 et seq. was implementation of the IDEA], 56501, subd. (a) [limiting complaints to IDEA issues of 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], 56504, subd. (a) [requiring CDE to enter a contract to conduct mediations and due process hearings under the IDEA as set forth in Title 34 Code of Federal Regulations, parts 300.506 and 300.511].) Thus, the OAH Special Education Division's jurisdiction will always be limited to IDEA claims absent a change to state law that would require CDE to contract with OAH for more than just IDEA mediations and hearings.

In sum, the allegations of Section 504 FAPE violations in Student's complaint, as well as violations of the United States Constitution, the Americans with Disabilities Act of 1990, Section 504, and any other Federal laws protecting the rights of children with disabilities are facially outside of OAH's jurisdiction. Accordingly, because OAH has no authority to hear such claims, they must be dismissed. While Student may seek *remedies* that are also available under these other laws, the legal claims decided at the hearing must be limited to those arising under the IDEA.

#### ORDER

1. District's Motion to Dismiss the following claims is granted: "U. S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 [29 USCS §§ 790 et seq.] (Section 504), and all other Federal laws protecting the rights of children with disabilities....."

2. The matter will proceed as scheduled as to the remaining issues under the IDEA only.

IT IS SO ORDERED.

Dated: April 2, 2012,

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings