

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012051032

ORDER RE: MOTION TO DISMISS  
ISSUES

On May 24, 2012, Student filed a Due Process Hearing Request<sup>1</sup> (complaint) naming Poway Unified School District (District). On June 8, 2012, District filed a “Notice of Insufficiency/Motion to Dismiss Issues.” An Order Denying Notice of Insufficiency was issued June 12, 2012. The June 12, 2012, order found the complaint to be sufficient, but specifically did not rule upon the Motion to Dismiss Issues. In this motion, District contends OAH lacks jurisdiction over Student’s claims for violations of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), 20 U.S.C. section 6368(7)II (No Child Left Behind), and the California Teachers Association Code of Ethics and such claims should be dismissed.

On June 13, 2012, Student filed a Response to District’s motion to dismiss issues.

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

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

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 (29 U.S.C. § 701 et seq.), 20 U.S.C. section 6368(7)II (No Child Left Behind), and the California Teachers Association Code of Ethics.

## DISCUSSION

Student's seventeen page complaint alleges substantive and procedural violations of FAPE. The June 12, 2012, order determined that the complaint is sufficient and clarified the issues. The complaint also alleges District violated section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), 20 U.S.C. section 6368(7)II (No Child Left Behind), and the California Teachers Association Code of Ethics. The June 12, 2012, order noted OAH lacks jurisdiction to hear claims based upon these violations of and that these issues would be addressed in a separate order.

OAH's jurisdiction is limited to IDEA matters involving the 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. Accordingly, OAH does not have jurisdiction over Student's claims that District violated section 504, No Child Left Behind, and the California Teachers Association Code of Ethics.

## ORDER

1. Student's claims for violation of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), 20 U.S.C. section 6368(7)II (No Child Left Behind), and the California Teachers Association Code of Ethics are dismissed. The matter will proceed as scheduled as to all remaining issues arising under the IDEA.

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: June 14, 2012

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings