

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012080054

ORDER GRANTING MOTION TO  
DISMISS ISSUE TWO

On July 31, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Bonita Unified School District (District).

On August 2, 2012, Attorney for District, Karen E. Gilyard, filed a motion to dismiss Issue Number Two in Student's complaint because the issue alleges disability discrimination, which is outside the Office of Administrative Hearings' (OAH's) jurisdiction.

Student has filed no response to District's motion.

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 statutes such as Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code, the Americans with Disabilities Act, or the Unruh Act.

## DISCUSSION

OAH's jurisdiction is limited to disputes arising out of the IDEA and the California implementing laws, including those relating to 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, among others.

Here, Student's Issue Number Two contends that "Parent disagrees with District's refusal to retain Student in [first] grade". In support of this issue, Student explained that Student's twin brother attends the same school as Student, and that the brother is currently being retained in first grade because it is felt that the brother would benefit from repeated exposure to first grade. Further, Student explained that when he requested to be retained in first grade, as his brother, District refused. Thus, Student alleges that District discriminated against him because District denied "Student the same opportunity afforded to his brother ..."

In its motion, District alleges that OAH lacks jurisdiction to entertain Student's Issue Number Two because the issue fails to allege any violation under IDEA or the California special education laws. OAH agrees with District's contention.

As framed, Student Issue Number Two fails raise any issue with respect to any matter relating to the identification, evaluation, or educational placement of the Student, or the provision of FAPE to Student, among others. Further, Student has not alleged that District has failed to meet his unique educational needs, even as District denied his request to be retained in first grade. Therefore, because Student Issue Number Two does not involve a dispute regarding a proposal or refusal to initiate or change Student's identification, assessment or educational placement, the provision of a FAPE to Student, or the refusal of a Student's Parent to consent to an assessment, among others, OAH's jurisdiction is lacking. Therefore, District's motion to Dismiss Issue Two is granted.

ORDER

1. District's motion to dismiss Student's Issue Number Two is granted.

IT IS SO ORDERED.

Dated: August 9, 2012

/s/

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ADENIYI AYOADE  
Administrative Law Judge  
Office of Administrative Hearings