

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SANTA ROSA CITY SCHOOLS AND
WEST SONOMA COUNTY UNION HIGH
SCHOOL DISTRICT.

OAH CASE NO. 2013030058

ORDER GRANTING MOTION TO
DISMISS SECTION 504 CLAIMS

On February 28, 2013, Student filed a request for due process hearing (complaint), naming the Santa Rosa City Schools and the West Sonoma County Union High School District as the respondents.

On April 12, 2013, the respondents filed a motion to dismiss the portions of Student's complaint which allege violations of Section 504 of the Rehabilitation Act of 1973. On April 16, 2013, Student filed an opposition to the 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 responsibility].) The jurisdiction of the Office of Administrative Hearings (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

The District contends that Student's complaint alleges violations of Section 504 as well as claims under the IDEA. The District requests that the Section 504 claims be dismissed from Student's complaint.

Student opposes the motion. Student contends that Section 504 is alleged "for informational purposes only" and that Student is not trying to raise any claims under Section 504. Student believes that the facts surrounding Section 504 are relevant to Student's IDEA claims, in part, because the District has taken the position that its only obligation to Student was under Section 504, and the District has "used that as a defense to [its] obligation to comply with special education laws."

Despite Student's arguments, some of Student's issues appear to raise Section 504 claims as well as IDEA claims. For example, the second issue in Student's due process request alleges:

Did the District deny Student a FAPE by failing to provide special education and/or Section 504 placement, supports, services, and accommodations in accordance with special education laws, including Education Code sections 5600 *et seq.*; 56040; and related federal statutes and regulations?

If Student intended to raise a claim under Section 504 in that issue, then the Section 504 claim is outside of the jurisdiction of OAH. The 504 claim must be dismissed and the issue must go forward only on the claim which arises under IDEA. The same would be true for the other issues in Student's complaint that seem to allege claims under Section 504.

If Student did not intend to raise any claims under Section 504, it will not harm Student's case to dismiss these Section 504 issues. This dismissal will not stop Student at hearing from seeking to introduce evidence relevant to the IDEA claims, even if that relevant evidence has some connection to Section 504. Student does not need to allege Section 504 violations in the complaint to seek to introduce evidence relevant to IDEA claims at hearing.¹

¹ Nothing in this order is intended to make a ruling on the admissibility of any evidence that Student may seek to introduce at hearing.

ORDER

The District's Motion to Dismiss is granted. To the extent that any of Student's issues in the complaint raise claims under Section 504, those Section 504 claims are hereby dismissed from the issues. The matter will proceed on all remaining claims.

IT IS SO ORDERED.

Dated: April 19, 2013

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings