

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

STANISLAUS UNION SCHOOL
DISTRICT.

OAH CASE NO. 2013090985

ORDER GRANTING MOTION TO
DISMISS ISSUES

On September 26, 2013, Parent on behalf of Student (Student) filed a Due Process Hearing Request¹ (complaint) naming the Stanislaus Union School District (District).

On October 18, 2013, Attorney for District, S. Diane Beall, filed a motion to dismiss Issue 1(c) and Issue 2(a) and (c) from Student's complaint because the sub-issues are outside of the Office of Administrative Hearings' (OAH's) jurisdiction. Student 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

¹ 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 other non-IDEA or California special education 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.

Student's Issue 1(c) contends that District denied her a FAPE because District failed to provide her education at no cost to her parent. Based on the facts provided in support of Issue 1, Student alleges that she fell at school on April 12, 2013, and that her Parent has incurred medical costs as a result of her injury from the fall. District contends that Student appears to be seeking monetary damages. Thus, District contends that Issue 1(c) is outside OAH's jurisdiction and must be dismissed. While District is correct that Issue 1(c) could be interpreted to suggest that parent intends to seek monetary damages as a result of the alleged failure in Issue 1(c), the sub-issue does not expressly ask for any monetary damages. Further, included in the facts supporting the sub-issue is the allegation that Student missed six days of school as a result of her injury. On its own, the absences from school raise a recognizable claim under IDEA, which could support a denial of FAPE claim. Therefore, as framed, because Student Issue 1(c) raises a possible FAPE issue, it will not be dismissed at this time without additional information. Therefore, District request that OAH dismiss Student's Issue 1(c) is denied at this time.

In Student's Issue 2 (a), Student alleges that District violated Student's rights by "forcing an injured student to stand without a medical release." Otherwise, this sub-issue does not allege a denial of FAPE or provide any information how a denial of FAPE might have occurred. OAH lacks jurisdiction to entertain Student's Issue 2(a) because the sub-issue fails to allege any violation under IDEA or the California special education laws. As framed, Student Issue 2 (a) fails to 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. Therefore, OAH lacks jurisdiction to hear this issue and Issue 2(a) is dismissed.

As in 2(a), Student's Issue 2 (c) fails to allege a denial of FAPE or provide any information how a denial of FAPE might have occurred. Instead, in Issue 2(c) Student alleges that District violated her rights by "failing to file form 8572 per Penal Code section

11166.” Student fails to establish that OAH has jurisdiction to enforce the Penal Code, or to otherwise entertain Student’s Issue 2(c). Thus, as framed, this sub-issue fails to allege a violation under IDEA or the California special education laws. The sub-issue 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. Therefore, OAH lacks jurisdiction to hear this issue and Issue 2(c) is dismissed.

District also requested that OAH strike proposed remedies 1, 2, and 3 sought by Student because OAH does not have jurisdiction to award the remedies. Without making any finding on the underlying arguments made by District in this regard, this request is denied. The hearing ALJ will evaluate his/her authority to craft and award remedies under the law, and as appropriate.

ORDER

1. District’s motion to dismiss Student’s Issue 1(c) is denied without prejudice.
2. District’s motion to dismiss Student’s Issue 2(a) and (c) is granted.
3. Student’s case shall proceed as to the remaining Issues and sub-issues

IT IS SO ORDERED.

Dated: November 6, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings