

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015030199

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS AND
LIMITING COMPLAINT AS TO TIME

On February 27, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a request for Due Process Hearing (complaint) naming Newport-Mesa Unified School District. On March 9, 2015, Newport-Mesa Unified School District filed a partial motion to dismiss certain claims and to limit the complaint as to time. No response was received from Student.

The complaint contains two issues. Both issues allege that Newport-Mesa violated the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and “the civil rights act under 42 U.S.C, § 1983.”

Motion to dismiss claims outside of OAH jurisdiction

Newport-Mesa first seeks dismissal from Student’s complaint claims that arise out of Section 504, the ADA and Section 1983.

OAH does not have jurisdiction to entertain claims based on Section 504, Section 1983, or other related state and federal civil rights laws. The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” 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 a 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.)

Each of the two issues in Student's complaint alleges claims under Section 504, Section 1983 and other related state and federal civil rights laws. Although special education law does not provide for a summary judgment procedure, here District's motion is limited to matters that are facially outside of OAH jurisdiction. Accordingly, the motion is granted and all claims arising out of Section 504, Section 1983 and other related state and federal civil rights laws shall be dismissed and stricken from the complaint.

Motion to Limit Complaint as to Time

District seeks an order limiting the complaint as to time, and specifically to claims arising after May 4, 2013. District's motion is credibly supported by a declaration under penalty of perjury from District's counsel, including an authenticated copy of a May 4, 2013 settlement agreement, minus Attachment A, signed by Student's parents. Student's attorney approved the settlement agreement as to form. The settlement agreement references a due process complaint filed on June 22, 2012, in OAH case number 2012060910. District contends that Parents waived all educational claims through the date of execution of the agreement, a contention which is supported by the settlement agreement at paragraph 7.

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 2007 WL 949603 the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

Here, Student's complaint provides a factual history that substantially predates the May 4, 2013 settlement agreement. The complaint specifically identifies two issues, both of which arise from "April 23, 2013 to the present." Issue One asserts that District denied Student a FAPE by failing to develop a comprehensive individualized education program, including appropriate goals and related services. Issue Two asserts that District failed to offer Student an appropriate placement with appropriately trained personnel necessary to address all of Student's needs. Neither issue asserts that District denied Student a FAPE by breaching any provision of the May 4, 2013 settlement agreement.

Because the plain language of the settlement agreement resolved all claims through May 4, 2013, Student's claims in this matter shall be limited to those arising from May 5, 2013 to the date of filing of this matter. All claims prior to that date shall be dismissed and stricken from the complaint.

ORDER

1. District's motion to dismiss all claims in Student's complaint that arise out of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the civil rights act under 42 U.S.C. 1983 (Section 1983) is granted. All such claims shall be stricken from the complaint.

2. District's motion to limit Student's claims to those arising after May 4, 2013 is granted. All claims arising prior to May 5, 2013 are dismissed.

3. All previously set dates are confirmed.

IT IS SO ORDERED.

DATE: March 17, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings