

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CORONADO UNIFIED SCHOOL
DISTRICT and SWEETWATER UNION
HIGH SCHOOL DISTRICT.

OAH CASE NO. 2010080734

ORDER GRANTING MOTION TO
DISMISS

On August 19, 2010, Student filed a request for due process (complaint) with the Office of Administrative Hearings (OAH), naming Coronado Unified School District (Coronado District), and Sweetwater Union High School District (Sweetwater District).¹ On October 5, 2010, the Districts filed a motion to dismiss several issues in Student’s complaint. On October 8, 2010, Student filed an opposition to the motion to dismiss.

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 OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

¹ Collectively the school districts shall be referred to as “the Districts.”

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.), also known as the Americans with Disabilities Act (ADA), and Section 1983 of Title 42 United States Code, also known as the Civil Rights Act of 1964 (Civil Rights Act). OAH also does not have jurisdiction to order a school district to modify a student's transcripts or grades. (Ed. Code § 49070.) Finally, there are no provisions in the IDEA or Education Code that grant OAH authority to determine attorney fees and costs due to Student, should Student prevail in a due process hearing.

DISCUSSION

In the present matter, Student has alleged violations of the IDEA, the ADA, and the Civil Rights Act. In addition, Student has requested that OAH order the Districts to change Student's transcripts and grades. Finally, Student has asked for OAH to make a determination of, and an award of attorney fees and costs due to Student for bringing this action. The Districts have filed a motion asking OAH to dismiss these claims.

When Student prepared his prehearing conference (PHC) statement, he rephrased and renumbered some of the issues previously contained in his complaint. In his opposition to the motion to dismiss, Student contends that the Districts have asked for dismissal of issues that were numbered differently from the issues in his complaint, so it is unclear which issues in the complaint are subject to the Districts' motion to dismiss. However, in the motion to dismiss, the Districts quoted each of the disputed issues from Student's PHC statement, and numbered them according to how they were numbered in the PHC statement. It is clear which issues the Districts seek to have dismissed, regardless of how they are numbered or phrased in either the complaint or the PHC statement. In addition, this Administrative Law Judge (ALJ) conducted the PHC in this matter on October 6, 2010, and the parties and the ALJ discussed each of the issues delineated in both the complaint and the PHC statement. All parties understood that the Districts were requesting dismissal of those issues alleging ADA and Civil Rights Act violations, as well as the requests for transcript and grade changes, and attorney fees and costs.

As previously noted, ADA and Civil Rights Act violations are not within the purview of OAH. 20 U.S.C. section 1415, subdivision (l) of the IDEA is cited by Student as authority that confers jurisdiction upon OAH to rule on these non-IDEA issues. However, this is not the correct interpretation of this statutory provision.

Section 1415, subdivision (l), allows a proceeding before OAH concerning the provision of an education to a child with a disability pursuant to the IDEA to also serve as a proceeding that exhausts administrative remedies for the purposes of ADA and Civil Rights Act litigation. However, neither of these latter statutes confers jurisdiction upon a state administrative agency such as OAH to decide whether these other acts have been violated by a school district, and to award damages for these violations. The OAH due process hearing will satisfy the requirements of both acts that administrative remedies were exhausted prior

to the filing in federal court only. Accordingly, the issues concerning alleged violations of the ADA and Civil Rights Act and requesting damages for those violations are dismissed.

The procedure for changing transcripts and grades, as detailed in section 49070 of the Education Code, does not contemplate OAH involvement. If the Legislature had intended to confer jurisdiction on OAH to make such changes, the statute would have so stated. The process described in section 49070 involves only school officials. Accordingly, OAH is without jurisdiction to order changes to Student's transcript and grades, and this issue is dismissed.

Finally, there is no provision in either the IDEA, or California's implementing statutes that confer authority on OAH to determine and authorize the payment of attorney fees and costs to the attorney of a student who prevails in a due process hearing. Accordingly, this issue is also dismissed.

ORDER

1. The Districts' motion to dismiss is granted as to issues concerning violations of the ADA and the Civil Rights Act of 1964.

2. The District's motion to dismiss is granted as to Student's issue requesting that OAH order the Districts to modify Student's transcripts and grades.

3. The District's motion to dismiss Student's issue asking for OAH to order the Districts to pay his attorney fees and costs is also granted.

4. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: October 13, 2010

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings