

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DESERT MOUNTAIN SELPA, HIGH
TECH HIGH, GARY AND JERRI-ANN
JACOBS HIGH TECH HIGH.

OAH CASE NO. 2011030598

ORDER GRANTING MOTION TO
DISMISS ISSUE 4 OF DUE PROCESS
REQUEST

On March 11, 2011, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) containing five issues. The complaint names as respondents the San Diego Unified School District, Desert/Mountain Special Education Local Planning Area (SELPA), High tech High Media Arts, and the Gary and Jerri-Ann Jacobs High Tech High.¹

On March 25, 2011, attorneys Jack Clarke, Jr. and Megan Moore filed on behalf of the SELPA, High Tech High Media Arts and the Gary and Jerri-Ann Jacobs High Tech High (collectively referred to as High Tech) a notice of insufficiency NOI as to Issue Four only. SELPA and High Tech contend that OAH does not have jurisdiction to hear Issue Four. Since the NOI involves a request to dismiss Issue Four, the NOI is deemed to be a motion to dismiss the issue. OAH has received no response from Student.

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

¹ On March 28, 2011, OAH granted the motion of SDUSD to be dismissed from the matter.

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.)

DISCUSSION

In her complaint, Student's Issue Four is stated thusly:

On or before December 25, 2010, my daughter's rights to confidentiality were violated when a pop-up window link on her Humanities teacher's public electronic calendar stated her first and last name and the [IEP team] meeting date and time and the consideration of whether she qualifies for special education.

Education Code section 56501, subdivision (a) sets forth that a due process hearing may be requested for issues concerning (1) proposal to initiate or change the identification, assessment, or educational placement of a child or the provision of a free appropriate public education (FAPE) to the child; (2) a refusal to initiate or change the identification, assessment, or the educational placement of a child or the provision of a FAPE to the child; (3) the child's parent or guardian refuses to consent to an assessment of the child; and (4) there is a disagreement between the school district and child's parent regarding the availability of an appropriate program for the child. Jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Student's Issue Four does not comply with the issues set forth in Education Code section 56501, subdivision (a)(1-4). Thus, OAH does not have jurisdiction to hear Issue Four. Accordingly, the motion is GRANTED and Issue Four is dismissed.

ORDER

The Motion to Dismiss by the SELPA and High Tech is granted. Issue Four is dismissed. The matter will proceed as scheduled as to Issues One, Two, Three, and Five.

Dated: April 05, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings