

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011040665

ORDER DENYING IN PART AND
GRANTING IN PART THE
DISTRICT'S MOTION TO DISMISS

On April 15, 2011, Michael T. Brooks, Attorney at Law, and Gillian S. Sonnad, Attorney at Law, filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint) on behalf of Student against Fresno Unified School District (District). On April 22, 2011, the District filed a motion to dismiss the complaint. On April 25, 2011, Student filed an opposition to the motion to dismiss.

APPLICABLE LAW

Education Code section 56041.5 provides:

When an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs. The local educational agency shall notify the individual and the parent of the transfer of rights.

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.)

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.), and the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

In the present matter, the District asks that Student's complaint be dismissed because he will reach the age of majority (18) on May 17, 2011, and the complaint is currently being prosecuted by his mother (Mother) who holds his educational rights until that time. The District also asks that OAH dismiss claims that ask OAH to tailor relief so that it addresses the District's alleged actions against other unnamed students that were similar to its purported actions against Student.

In its opposition, Student asserts that he will continue to have Mother hold his educational rights after he reaches the age of majority. Student further asserts that OAH can tailor relief that pertains to Student, as well as other similarly situated students.

When Student attains the age of 18, he may submit to OAH an assignment of educational rights from himself to Mother, if he wants her to continue representing him. OAH will assume Student holds his own educational rights as of May 17, 2011, unless otherwise notified. As for the District's request that OAH dismiss claims pertaining to other unnamed students, OAH does not have jurisdiction over such claims. Accordingly, those claims are dismissed.

Sua sponte, OAH is also dismissing Student's claims alleging that the District discriminated against him in violation of section 504, and the Unruh Civil Rights Act, as OAH does not have jurisdiction over these issues.

ORDER

1. The District's motion to dismiss on grounds that Student will reach the age of majority on May 17, 2011, is denied without prejudice as it is premature. The matter shall proceed as scheduled.

2. Student's claims pertaining to unnamed students, and allegations that the District violated section 504 and the Unruh Civil Rights Act are dismissed.

IT IS SO ORDERED.

Dated: May 3, 2011

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings