

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PALM SPRINGS UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011050462

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

On May 11, 2011, Student filed a Due Process Request against District alleging seven violations of a FAPE. On May 20, 2011, District filed a motion to dismiss or exclude Issues 5 and 7 on the grounds that OAH does not have jurisdiction; and that they do not assert an actual issue for which relief may be granted. Student did not file an opposition.

Issue 5 in Student's Due Process Request alleges that District denied a FAPE during the 2010/2011 school year by attempting to change his qualifying condition from Mental Retardation to Other Health Impairment, which would have affected his entitlement to certain special education placements, supports and services.

Issue 7 alleges that District denied a FAPE during the 2010/2011 school year by "exasperating" [sic] Student's depression, anger, and poor relations with his family by telling him confidential and untrue statements, which resulted in diminished self-esteem; and by giving him unrealistic expectations for his life after high school.

DISCUSSION

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.)

In application of the authority cited above, Issue 5 bears directly on the District's proposal or refusal to initiate a change in the identification, assessment or educational placement of a child, and the provision of FAPE to a child. Issue 5 asserts an actual issue for which relief may be granted. OAH has jurisdiction over Issue 5.

Issue 7 alleges a civil tort action against District, not a proposal or refusal to initiate a change in the identification, assessment or educational placement of a child or the provision of FAPE to a child. Issue 7 fails to allege violations of the IDEA or corresponding state law against District. Issue 7 does not assert an actual issue under the IDEA for which OAH may grant relief. OAH has no jurisdiction over Issue 7, and accordingly, it should be dismissed.

#### ORDER

1. District's Motion to Dismiss is granted as to Issue 7, but denied as to Issue 5.
2. The matter will proceed as scheduled on all issues except Issue 7.

Dated: May 26, 2011

/s/

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DEBORAH MYERS-CREGAR  
Administrative Law Judge  
Office of Administrative Hearings