

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

COTATI ROHNERT PARK UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015120932

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On December 24, 2015, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Cotati Rohnert Park Unified School District. On January 13, 2016, District filed a Motion to Dismiss Student’s claims involving District’s revocation of Student’s interdistrict transfer, alleging that OAH does not have jurisdiction to hear these claims. District also moved to dismiss claims regarding alleged violations of various civil rights statutes. On January 18, 2016, Student filed a response that opposed dismissal of claims involving the interdistrict transfer, but did not oppose dismissal of the civil rights claims.

APPLICABLE LAW

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 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.) /Section 1983 of Title 42 United States Code (Section 1983)/the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.)/ the Unruh Civil Rights Act (Civ. Code, § 51)].

Generally, issues concerning inter-district transfers for students are not within the jurisdiction of OAH. Education Code, section 46600, et seq., describes the process for obtaining an interdistrict transfer and for appealing a denial of the request. Pursuant to the Education Code, appeals addressing denials of a transfer are made to county offices of education, not to OAH. There is no statutory or regulatory authority that provides OAH with jurisdiction over issues concerning inter-district transfers, if the transfer is unrelated to the provision of a FAPE to a student (or some similar statement that is supported). (See, *Student v. Fresno Unified School Dist.* (February 25, 2009) Cal.Offc.Admin.Hrngs, Case No. 2008100696, at p. 4.)

Cases involving revocation of interdistrict transfers for disciplinary reasons for students who are eligible for protection under the IDEA can be analogized to the protections for students attending school in their own district of residence since both involve a change of educational placement. When the issues in a due process hearing request involve student discipline for violating school conduct rules, and the student was not identified as being eligible for special education at the time of the discipline incident, stay put applies only if the local educational agency is “deemed to have had a basis of knowledge that the student suffered from a disability before the occurrence of the behavior that prompted the disciplinary action.” (20 U.S.C. § 1415(k)(5).) The LEA is “deemed to have had a basis of knowledge that a student was a student with a disability” if any of the following occurred before the behavior that caused the disciplinary action: 1) parent expressed a concern in writing that the child needed special education; 2) the parent requested a special education assessment; or 3) “the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency.” (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b) (2006).)

DISCUSSION

District contends that OAH lacks jurisdiction to hear both Student’s expedited and non-expedited claim that District revoked Student’s interdistrict transfer in retaliation of Student’s Parents exercising their rights under the IDEA to have Student assessed for special education eligibility. Student contends that OAH has jurisdiction to hear these claims because a school district cannot revoke an interdistrict transfer because Student might be eligible for special education services or based on a parent’s advocacy for their child.

In the present matter, Student lives in a different school district and attended a District school with an interdistrict transfer from July 23, 2015 through November 30, 2015. Student has not been found eligible for special education and related services by his school district of residence or District. Student alleges that District at first refused to assess Student after Parent made a verbal assessment request, and then agreed to the assessment request on October 26, 2015, during a Student Success Team Meeting. Student further contends that, before District completed the eligibility assessment, the school principal, on November 10,

2015, threatened to revoke Student's interdistrict transfer. Eventually, the principal revoked the interdistrict transfer on November 30, 2015. Student asserts that District could not revoke the interdistrict while it was assessing Student for special education eligibility, and also that the Principal revoked the transfer due to Parent's advocacy for Student.

In this matter, the District would clearly have a basis of knowledge that Student might be eligible for special education services if it was in the midst of assessing Student. During the time while District was assessing Student, Student would be entitled to the protections of IDEA regarding disciplinary conduct, and also against the purported retaliation for Parent's special education advocacy for Student. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b) (2006).) While District may have revoked the interdistrict transfer for some other reason, a triable issue for hearing exists as to the reason for District revoking the interdistrict transfer. (See, *Beaumont Unified School District* (Office for Civil Rights, February 23, 2007, 48 IDELR 21, 107 LRP 26743, while case involves Section 504, the reasoning applies by analogy to further protections of the IDEA.) Further, District did not establish in its motion to dismiss that OAH does not have jurisdiction to hear claims and order reinstatement of an interdistrict transfer because a school district allegedly revoked an interdistrict transfer during the special education eligibility assessment process because of disciplinary conduct that might be a manifestation a student's disability or in retaliation for a parent advocating for the child's rights under IDEA. (See *Student v. Whittier City School District* (August 5, 2015) Cal.Offc.Admin.Hrngs, Case Nos. 20015020710 and 2015030328.)

However, as to Student's claim in Issue 11 that the District violated Section 504 and other civil rights statutes is dismissed for lack of jurisdiction.

ORDER

1. District's Motion to Dismiss is granted as to Issue 11 as OAH lacks jurisdiction.
2. District's Motion to Dismiss is denied as to issues involving the revocation of Student's interdistrict transfer. The matter, both expedited and non-expedited, shall proceed as scheduled on the remaining issues for hearing.

IT IS SO ORDERED.

DATE: January 20, 2016

/s/

PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings