

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013010255

ORDER GRANTING MOTION TO
DISMISS ISSUES 4, 5, AND 6

On January 8, 2012, Student filed a Request for Due Process Hearing (complaint), naming Temecula Valley Unified School District (District) as the respondent.

On January 15, 2013, District filed a Motion to Dismiss Issues 4, 5, and 6, alleging that those issues do not fall within OAH's jurisdiction and are not related to special education law. Student did not file a response 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.)

In Issue 4, Student alleges that District violated an unidentified Education Code section by failing to timely and appropriately notify Student's parents of his arrest, transportation to a hospital, and to a juvenile detention center. Student alleges this placed him in physical and emotional harm, and violated his constitutional right under the Fifth Amendment against self incrimination.

Issue 4 does not allege a violation of the IDEA and does not relate to the identification, evaluation, or educational placement, or the provision of FAPE. Issue 4 does not allege a violation of manifestation determination provisions under special education law. Thus, OAH does not have jurisdiction over this issue.

In Issue 5, Student alleges that District violated Student's constitutional right to due process under the Fourteenth Amendment when it suspended him for three days without providing him with an opportunity to be heard.

Issue 5 purportedly alleges a violation of Education Code section 48900 and the Fourteenth Amendment to the Constitution. Issue 5 does not allege a violation of the IDEA and does not relate to the identification, evaluation, or educational placement, or the provision of FAPE. Issue 5 does not allege a violation of manifestation determination provisions under special education law. Thus, OAH does not have jurisdiction over this issue.

In Issue 6, Student alleges that District violated an unidentified Education Code section by providing the sheriff's department with Student's personal information, profile, grades and classes, which enabled the sheriff's to conduct a sting operation. Student also alleges a violation of the California constitution.

Issue 6 purportedly alleges a violation of Education Code section 49073 relating to the release of Student information, and a violation of the Family Educational Rights and Privacy Act (20 U.S.C. § 1232 (g).) Issue 6 does not allege a violation of the IDEA and does not relate to the identification, evaluation, or educational placement, or the provision of FAPE. Issue 6 does not allege a violation of manifestation determination provisions under special education law. Thus, OAH does not have jurisdiction over this issue.

ORDER

District's Motion to Dismiss as to Issues 4, 5 and 6 is granted. The matter will proceed as scheduled as to the remaining issues.

Dated: January 30, 2013

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings