

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT,

and

TAMALPAIS UNION HIGH SCHOOL DISTRICT,
OAH CASE NUMBER 2021100290
OAH CASE NUMBER 2021110001

ORDER GRANTING IN PART AND DENYING IN PART
MOTION TO DISMISS ISSUES FOR LACK OF JURISDICTION

NOVEMBER 4, 2021

On October 8, 2021, Parent on behalf of Student filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing in OAH case number 2021100290, Student's Case, naming Tamalpais Union High School District. A Request for Due Process Hearing is referred to as a complaint.

On October 28, 2021, Tamalpais Union filed a complaint in OAH case number 2021110001, Tamalpais Union's Case, naming Student. On November 4, 2021, OAH consolidated Student's Case with Tamalpais Union's Case.

On November 2, 2021, Tamalpais Union filed a Motion to Dismiss, seeking dismissal of Student's Issues 4(b) and 7. On November 3, 2021, Student filed an opposition to the motion to dismiss Issue 4(b), but did not oppose dismissal of Issue 7.

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, called 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 FAPE to such child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), the Unruh Civil Rights Act (Civ. Code, § 51), or other civil rights laws. Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, for example, civil rights claims, special education law does not provide for a summary judgment procedure.

DISCUSSION

Tamalpais Union contends Issue 4(b) of Student's complaint involves Parent's challenge to Student's grades, and is therefore, outside OAH's jurisdiction and should be dismissed. Student contends Issue 4(b) involves an alleged violation by Tamalpais

Union in unilaterally implementing a modified grading system outside of the IEP team process, resulting in denial of a FAPE to Student.

Issue 4(b) of Student's complaint is not facially outside OAH's jurisdiction, as the issue involves a denial of a FAPE based on an alleged violation by Tamalpais Union for improper unilateral implementation of a modified grading system outside of the IEP team process. Accordingly, the motion to dismiss Issue 4(b) is denied.

Issue 7 of Student's complaint involves claims based on Section 504, the ADA, and other federal and state civil rights laws. OAH does not have jurisdiction to address these claims. Accordingly, Issue 7 is dismissed.

ORDER

1. Tamalpais Union's Motion to Dismiss Issue 4(b) of Student's complaint is denied.
2. Tamalpais Union's Motion to Dismiss Issue 7 of Student's complaint is granted. The consolidated matters shall proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Rommel P. Cruz

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Administrative Law Judge

Office of Administrative Hearings