

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL DISTRICT AND ROCKLIN UNIFIED
SCHOOL DISTRICT.

OAH CASE NUMBER 2021120714

ORDER GRANTING MOTION TO DISMISS ISSUES FOR
LACK OF JURISDICTION

JANUARY 12, 2022

On December 21, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Elk Grove Unified School District. The Office of Administrative Hearings is referred to as OAH.

On January 4, 2022, Elk Grove filed a Motion to Dismiss Issue 8 alleging OAH lacks jurisdiction to adjudicate the claim. On January 7, 2022, Student filed an opposition.

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 free appropriate public education 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 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.), or the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

Elk Grove seeks dismissal of Issue 8 on the grounds that OAH does not have jurisdiction to hear a claim of retaliation against Student and Parent. Student’s complaint does not allege an Issue 8. Student’s Issue 7 alleges that Elk Grove violated

Student's and Parent's rights by retaliating against them. Accordingly, this order addresses Elk Grove's motion to dismiss the retaliation claim as alleged in Issue 7.

Student's Issue 7 alleges Elk Grove violated Student's and Parent's rights by retaliating against them in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, deprivation of rights under the First and Fourteenth Amendments of the United States Constitution, enforceable through 42 United States Code, Section 1983, and interference with rights under the California Constitution, Article 1, Section 3, subdivision (a). Student alleges Elk Grove retaliated against Student and Parent by contacting Children's Protective Services regarding Student absences, which Student contends were related to Elk Grove's failure to provide appropriate accommodations to Student.

District asserts OAH lacks jurisdiction over these claims because they do not arise under the IDEA. Student acknowledges, in his opposition, that the retaliation claims are not IDEA claims. Student argues, nonetheless, that the retaliation claims relate to the provision of a free appropriate public education because they involve retaliation against Student for attempting to enforce his right to a free appropriate public education under the IDEA.

Student fails to cite law supporting his arguments. Student argues that Senate Bill 98, which he claims is part of the California Constitution, changed California Education Code sections 43503 and 43504. He does not allege how such a change turns retaliation claims into IDEA claims. More importantly, SB 98, approved by the Governor October 9, 2021, pertains to Section 409.7 of the Penal Code and does not relate to the Education Code. Chapter 43000, et. seq. of the Education Code relates to voter-approved special taxes for new school facilities and does not contain a section 43503 or 43504.

OAH does not have jurisdiction to resolve claims regarding retaliation as alleged in Student's Issue 7. Accordingly, Issue 7 is dismissed.

ORDER

Elk Grove's Motion to Dismiss as to the retaliation claim alleged in Issue 7 is granted. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Cole Dalton

Cole Dalton

Administrative Law Judge

Office of Administrative Hearings