BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. OXNARD SCHOOL DISTRICT.	OAH Case No. 2018090070 ORDER DISMISSING IN PART STUDENT'S COMPLAINT

On August 30, 2018, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings, naming Oxnard School District. In the complaint, Student alleged facts regarding Oxnard's purported failure to timely locate and assess her for eligibility to receive special education services, and that the proposed assessment plan would not assess Student in all areas of suspected disability.[1] Student's complaint also contends that this matter should be certified a class action on behalf of similarly situated students in the school district for whom Oxnard has denied a free appropriate public education under the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), and also violations of the Americans with Disabilities Act (Title 42 U.S.C. §§ 1201, et seq.), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.).

On September 13, 2018, OAH issued an order to show cause regarding what claims, if any, in Student's complaint that OAH has jurisdiction to decide. The order set a briefing schedule for the parties.

Student and Oxnard filed their written responses with OAH on September 18, 2018, and their reply briefs on September 21, 2018.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

[1] In the complaint, Student does not explicitly allege that she is eligible for special education services.

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), and the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.).

DISCUSSION

Class Action Claims and Primero Los Niños

Student's complaint raises individual claims that Oxnard denied her a FAPE, but also raises claims by class members who Oxnard purportedly denied a FAPE, and Primero Los Niños seeks to be a class representative in Issue 1. While OAH has jurisdiction under the IDEA to hear individual claims raised by Student that Oxnard denied her a FAPE, OAH does not have jurisdiction to hear Student's claims of systemic violation and/or claims on behalf of similarly situated students. (*Student v. Oakland Unified School Dist.* (July 22, 2014) OAH Case No. 2014060962 (Motion to Dismiss).) This would also include claims brought by an organization on behalf of its members. Therefore, the class action claims and claims raised by Primero Los Niños in Issue 1 are dismissed.

Student's Claims Regarding Violations of ADA and Section 504

Student's complaint in Issues 2 and 3 alleges that Oxnard violated provisions of the ADA and Section 504, which OAH does not have jurisdiction to hear. Accordingly, Student's claims that Oxnard violated the ADA and Section 504 are dismissed, and the matter shall proceed as to Student's remaining special education claims.

Claims that Remain

Student alleges in Paragraphs 20 through 43 and in Issue 1 that Oxnard failed to assess Student to determine if she is eligible for special education and related services despite Oxnard being on notice that she may require special education and related services. However, Student does not allege that she is eligible to receive special education under any eligibility category and when Oxnard should have found her eligible. Therefore, Student's complaint shall proceed on her contentions that Oxnard should have assessed her for special education eligibility in all areas of suspected disability and convened an individualized education program team meeting to discuss the assessment findings regarding eligibility.

ORDER

1. Student's claims in Issue 1 on behalf of similarly situated students and claims by Primero Los Niños are dismissed.

2. Student's Issues 2 and 3 are dismissed.

3. Matter shall proceed as to Student's claims in Issue 1 that Oxnard should have assessed her for special education eligibility in all areas of suspected disability and convened an individualized education program team meeting to discuss the assessment findings regarding eligibility.

DATE: October 1, 2018

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Peter Paul Castillo
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PETER PAUL CASTILLO
Presiding Administrative Law Judge
Office of Administrative Hearings