

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2010021055

ORDER GRANTING MOTION TO  
DISMISS SECTION 504 AND  
SECTION 1983 CLAIMS

On February 22, 2010, Student filed a request for due process hearing (complaint), naming Newport-Mesa Unified School District (District).

On March 4, 2010, the District filed a response to Student's due process request. That response included a motion to dismiss the portions of Student's complaint which allege a violation of Section 504 of the Rehabilitation Act of 1973 and 42 United States Code section 1983. Student did not file a formal response to the motion, but Student's complaint states, in part:

Petitioner includes claims of the Respondent's violations of §504 and §1983 so as to provide the Respondents reasonable notice of all claims that may be pursued, so as to pursue any administrative remedy available and facilitate comprehensive alternative dispute resolution. Petitioner acknowledges and stipulates to the limited jurisdiction of the OAH without need for formal motion.

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.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504) or Section 1983 of Title 42 United States Code (Section 1983).

## DISCUSSION

The District's motion has merit. Each of the four issues alleged by Student in the complaint contains both allegations that the District denied Student a FAPE and allegations that the District violated Section 504 and Section 1983. OAH does not have jurisdiction over Section 504 claims or Section 1983 claims. Those claims must be dismissed from Student's complaint. However, because each of Student's four issues also contains claims within the jurisdiction of OAH, only those portions of each issue which allege violations of Section 504 and Section 1983 will be dismissed.

## ORDER

GOOD CAUSE APPEARING, the District's motion to dismiss is granted as to any allegations in the complaint alleging that the District violated Section 504 or Section 1983. The case will proceed on the remaining issues alleged in the complaint, and all prehearing conference, hearing, and other dates previously set in this matter will remain on calendar.

It is so ordered.

Dated: March 15, 2010

/s/

---

SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings