

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011110307

ORDER GRANTING IRVINE UNIFIED  
SCHOOL DISTRICT'S MOTION TO  
DISMISS ISSUE TWO

On November 8, 2011, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Irvine Unified School District (District) as the respondent. The complaint consists of two issues. Issue one alleges that the District has failed to provide Student a free appropriate public education both procedurally and substantively in violation of the Individuals With Disabilities Education Act (IDEA). Issue two alleges that the District and its staff have violated Student's rights under federal and state law, including Section 504 of the Rehabilitation Act of 1973 and section 1983 of Title 42 of the United States Code plus state statutory and common law.

On November 18, 2011, the District filed a Motion for Dismissal of Issue Two, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and state law.

OAH received no response to the District's motion.

APPLICABLE LAW

The purpose of the 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.) Thus, 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 1983 of Title 42 United States Code, or other state statutory or common law.

ORDER

District's Motion to Dismiss Issue Two is granted. The matter will proceed as scheduled as to the remaining issue.

IT IS SO ORDERED.

Dated: November 22, 2011

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings