

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060427

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On June 7, 2011, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Newport-Mesa Unified School District (District) as the respondent. The complaint contains two issues. The first issue alleges that the District has failed to provide a free appropriate public education (FAPE) to Student because of assessments which were not appropriate. The second issue alleges that the Student did not receive a FAPE because the Individualized Education Programs (IEP) offered by the District were not appropriate. Both issues cite the Individuals with Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and “any related state and federal civil rights laws.”

On June 12, 2012, the District filed a Motion for Partial Dismissal, 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 “any related state and federal civil rights laws.”

OAH received no response to the District’s 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.) 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.) or Section 1983 of Title 42 United States Code.

ORDER

The District's Motion to Dismiss all claims made pursuant to Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and "any related state and federal civil rights laws" is GRANTED. All such claims are hereby dismissed. The matter will proceed as scheduled against the remaining issues.

IT IS SO ORDERED.

Dated: July 18, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings