

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012060430

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On June 12, 2012, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings (OAH), naming District as the Respondent. The complaint set forth extensive factual background and allegations concerning assessments, and individualized educational program (IEP) meetings on March 18, 2011, October 13, 2011, and January 17, 2012, each of which allegedly contained deficiencies identifying and addressing Student's unique needs. The complaint stated three "issues." Issue 1 concerned assessments and alleged that District failed to appropriately assess Student throughout the two year period preceding the filing of the complaint. Issue 2 concerned IEP's and alleged that each of Student's IEP's failed in many respects to identify his needs and offer him a free appropriate public education (FAPE). Issue 3 concerned procedural violations depriving parents of their participatory rights. Each of the three Issues stated that they concerned violations of several applicable laws: the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.); and Section 1983 of Title 42 United States Code.

On June 22, 2012, District filed a Motion to Dismiss the allegations in Issues 1 through 3, insofar as they pertain to Section 504 of the Rehabilitation Act of 1973 or Section 1983 of Title 42 United States Code. Student has filed no opposition.

The purpose of the IDEA is to "ensure that all children with disabilities have available to them a 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.) or Section 1983 of Title 42 United States Code.

Therefore, to the extent that each of the three issues stated in the complaint alleges violations of Section 504 of the Rehabilitation Act of 1973 or Section 1983 of Title 42 United States Code, OAH lacks jurisdiction and those claims are dismissed.

ORDER

1. District's Motion to Dismiss is granted as to those portions of Issues 1 through 3 claiming violations of Section 504 of the Rehabilitation Act of 1973 or Section 1983 of Title 42 United States Code.

2. The matter will proceed as scheduled as to the remaining portions of Issues 1 through 3 that are brought under the IDEA.

Dated: July 10, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings