

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. 2012070601

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS

On July 18, 2012, Parent 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 three issues. The first issue alleges that the District has failed in its child find obligation to Student following Student's traumatic brain injury in December 2011. The second issue alleges that the District failed to provide a free appropriate public education to Student after Student suffered her traumatic brain injury. Student's third issue queries whether the District's denial of FAPE to Student resulted in denials of her rights under 42 United States Code, section 1983 (Section 1983), Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA), and the California Unruh Act.

On July 30, 2012, the District filed a motion for partial dismissal of Student's complaint, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear Student's claims based on Section 504, Section 1983, the ADA, or the Unruh Act.

Student has not filed an opposition or other response to the District's motion to dismiss.

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, Section 1983, the ADA, or the Unruh Act.

ORDER

The District's motion to dismiss Student's issue three is GRANTED. All of Student's claims made pursuant to Section 504, Section 1983, the ADA, or the Unruh are hereby dismissed. The matter will proceed as scheduled as to issues one and two of Student's complaint.

Dated: August 9, 2012

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings