

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. 2013010111

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On January 2, 2013, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Irvine Unified School District (District) as the respondent.

On January 14, 2013, 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, No Child Left Behind Act and related state and federal 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.), No Child Left Behind, Section 1983 of Title 42 United States Code, or related other federal and state laws.

ORDER

The District's Partial Motion to Dismiss all claims made pursuant to Section 504 of the Rehabilitation Act of 1973, No Child Left Behind, Section 1983 of Title 42 of the United States Code and any related state and federal laws is GRANTED. All such claims are hereby dismissed. The matter will proceed as scheduled as to Student's claims under the IDEA and related California law.

IT IS SO ORDERED.

Dated: January 24, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings