

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013010402

ORDER GRANTING MOTION TO
DISMISS ISSUES 7 AND 8

On January 15, 2013, Parents 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 contains nine issues which are referred to as allegations. Issue seven states that the District “discriminated against [Student] in violating Section 504 of the Rehabilitation Act of 1973.” In the eighth issue, Student alleges that the District “has retaliated against [Student’s] parents for asserting her special education rights pursuant to Section 504 and IDEA.” In support of Issue Eight, Student asserts that “when they [parents] began questioning whether it was appropriate to put [Student] and her much more capable brother into an autistic-specific ‘transitional’ kindergarten class...IUSD’s tone changed dramatically.” Student also alleged: “It is unlikely that any of the individual’s involved featured a subjective intent to retaliate for [Student’s] parents’ advocacy.”

On January 24, 2013, the District filed a Motion for Dismissal of Issues Eight and Nine, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973.

OAH received no response to the District’s motion.

APPLICABLE LAW AND DISCUSSION

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.) of the 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 parties.

IT IS SO ORDERED.

Dated: February 04, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings