

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRANKLIN MCKINLEY SCHOOL
DISTRICT.

OAH CASE NO. 2013090172

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS STUDENT'S
COMPLAINT

On September 11, 2013, the Franklin McKinley School District (District) filed a motion to dismiss Student's due process hearing request (complaint) in its entirety. District contends that Student's complaint seeks only to enforce Student's rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)), and is outside of the jurisdiction of the Office of Administrative Hearings (OAH).

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.) OAH does not have jurisdiction to hear claims brought under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)).

DISCUSSION

Student's complaint alleges that Student entered District from the San Jose Unified School District (San Jose), but that District has not obtained nor implemented the Section 504 plan developed for Student during his enrollment in San Jose. The complaint states that Student's mother (Mother) may have inadvertently and incorrectly informed District that Student had an individualized education program (IEP), but has attached to it the Section 504 plan that Student seeks to enforce.

Student's complaint sets forth two claims: that (1) District should immediately implement Student's Section 504 plan as "stay put,"¹ and that (2) Student should not be disenrolled from District due to Mother's signature on a District document regarding over-enrollment that she thought was a document giving District an opportunity to observe how Student's disability affects a major life activity.

Each of the claims in Student's complaint arise under Section 504, and OAH does not have jurisdiction to hear claims brought under Section 504. Accordingly, District's motion to dismiss Student's complaint as facially beyond the jurisdiction of OAH is granted.

ORDER

1. District's motion to dismiss Student's complaint is granted. The matter is dismissed.
2. All previously set dates in this matter are vacated.

Dated: September 17, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

¹ Student's first issue was treated as a motion for stay put, and was denied by OAH order, dated September 10, 2013, on the grounds that Student had failed to establish that he had an IEP for purposes of stay put.