

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090848

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS STUDENT'S
ISSUES 5, 6 AND 7 AND STRIKING
STUDENT'S REQUEST FOR
MONETARY DAMAGES.

On September 25, 2013, Parent on behalf of Student (Student) filed a Due Process Hearing Request (complaint) naming the Los Angeles Unified School District (District).

On November 22, 2013, District filed a motion to dismiss Student's issues five, six and seven, and Student's requested remedy seeking an award of monetary damages, on grounds that OAH does not have jurisdiction over claims for violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504), the Americans With Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.) (ADA), or the Unruh Civil Rights Act (Civ. Code, § 51 et seq.), or jurisdiction to award monetary damages on those claims. Student filed no response to 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.)

OAH does not have jurisdiction to entertain claims based on Section 504, the ADA, or the Unruh Civil Rights Act. OAH also does not have jurisdiction to award monetary

damages, which are not available under the IDEA. (*C.O. v. Portland Public Schools* (9th Cir. 2012) 679 F.3d 1162, 1166.)

DISCUSSION

Student's complaint states seven "problems" (issues). Issues one through four are predicated on alleged violations of the IDEA, and are within OAH's jurisdiction. Student's issues five, six and seven allege that District violated Section 504, the ADA, and the Unruh Civil Rights Act, respectively, by discriminating against Student on the basis of his disability. These claims are not within OAH's jurisdiction, and District's motion to dismiss those claims is granted and only those claims are dismissed. Student's remedy "d.," which seeks monetary damages for the alleged violations of Section 504, the ADA, and the Unruh Civil Rights Act, is similarly not within OAH's jurisdiction, and that requested remedy, only, is stricken.

ORDER

1. District's motion to dismiss Student's issues five, six and seven is granted.
2. Student's requested remedy d. seeking an award of monetary damages on issues five, six, and seven is stricken.
3. Student's case shall proceed as to the remaining issues.

Dated: December 12, 2013

/s/

ROBERT MARTIN
Administrative Law Judge
Office of Administrative Hearings