

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. 2014090667

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On September 18, 2014, Parent on behalf of Student filed a Request for Due Process Hearing (complaint), naming the Los Angeles Unified School District as respondent.

On October 20, 2014, Los Angeles filed a Motion to Dismiss, alleging that the Office of Administrative Hearings lacks jurisdiction.

OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” 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 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and Section 1983 of Title 42 United States Code.

DISCUSSION

In the present matter, Student raises three issues. Issue A alleges that Los Angeles failed to hold a meeting pursuant to Section 504 to consider accommodations for Student. Student also alleges that his teacher used Student as a model for bad behavior resulting in discrimination and shaming based on his disability. Issue A is not made pursuant to the IDEA. OAH lacks jurisdiction for Issue A.

Issue B alleges that Los Angeles retaliated against Student's parent for her advocacy of Student's rights under Section 504 and the ADA. Again, Student has made no allegations pursuant to the IDEA. OAH lacks jurisdiction for Issue B.

Issue C is identified as Los Angeles made misrepresentations that it solved the problem so as to extend the applicable two year limitations period. In examining the allegations underlying Issue C, it is apparent that Student is alleging that Los Angeles denied Student a free appropriate public education under the IDEA by its refusal to hold an Individualized Education Program team meeting following assessments called for in a settlement agreement dated September 18, 2012, which mandated that Los Angeles fund an independent evaluation and hold an IEP team meeting within ten days of the receipt of the assessment report. Here, Student is clearly alleging that he was denied a FAPE in violation of the IDEA. Thus, OAH has jurisdiction to hear Issue C.

ORDER

Los Angeles's Motion to Dismiss is granted as to Issues A and B, and denied as to Issue C. Issues A and B are hereby dismissed. The matter will proceed as to Issue C, only, as scheduled.

IT IS SO ORDERED.

DATE: October 24, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings