

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016020470

ORDER GRANTING MOTION TO
DISMISS ISSUE TWO

On February 5, 2016, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint), naming Orange Unified School District. The complaint contains two issues which are referred to as problems. Issue two contends that Orange violated Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.).

On February 16, 2016, Orange filed a Motion for Dismiss Issue Two, alleging that the OAH is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973 and the ADA..

On February 17, 2016, Student filed with OAH an opposition to Orange's motion.

APPLICABLE LAW AND DISCUSSION

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.) 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 or the ADA.

Student contends that OAH has jurisdiction to hear Student's claims that Orange violated Section 504 and the ADA based on the language in Education Code section 56345, subdivision (d).

Section 56345, subdivision (d) states that the Legislature's intent is to be consistent with the IDEA. It does not confer jurisdiction to OAH to hear claims, which may be similar, under Section 504 or the ADA. The factors listed in the section are to be considered within as to whether Orange provided a FAPE to Student as alleged in the issue one.

ORDER

Orange's Motion to Dismiss Issue Two is GRANTED. Issue Two is hereby dismissed, and the matter will proceed as scheduled as to Issue One.

IT IS SO ORDERED.

DATE: February 18, 2016

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings