

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FOUNTAIN VALLEY SCHOOL
DISTRICT.

OAH Case No. 2016030648

ORDER GRANTING MOTION TO
DISMISS ISSUE XII

On March 14, 2016, Parents on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings naming the Fountain Valley School District. In Issue XII, Student alleges that “[t]he District has failed to offer a free appropriate public education within the meaning of Section 504 of the Rehabilitation Act of 1973.”

On March 24, 2016, District filed a Motion to Dismiss Issue XII, alleging that the Office of Administrative Hearings is without jurisdiction to hear that issue.

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.).

Here, Issue XII, which alleges a violation of Section 504, is not within OAH's jurisdiction.

ORDER

The District's Motion to Dismiss Issue XII is GRANTED. The matter will proceed as scheduled as to Issues I through XI.

IT IS SO ORDERED.

DATE: April 05, 2016

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings