

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016040520

v.

FOUNTAIN VALLEY SCHOOL DISTRICT,

FOUNTAIN VALLEY SCHOOL DISTRICT,

OAH Case No. 2016040720

v.

PARENT ON BEHALF OF STUDENT.

ORDER GRANTING MOTION TO
DISMISS ISSUE NO. 17

Student filed a request for due process hearing (complaint) on April 11, 2016. On April 21, 2016, Fountain Valley School District filed a motion to dismiss issue number 17 from Student’s complaint on the grounds OAH does not have jurisdiction over claims based upon Section 504 of the Rehabilitation Act. No opposition was received.

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. (Section 504)), the Americans with Disabilities Act (42 U.S.C. 12101 et seq. (ADA)) and California civil rights laws.

DISCUSSION

Issue number 17 of Student's complaint alleges Fountain Valley violated the provisions of Section 504 of the Rehabilitation Act by failing to offer a free appropriate public education to Student. 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.). Accordingly, Fountain Valley's Motion to Dismiss issue number 17 is granted. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: April 28, 2016

DocuSigned by:

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VERNON BOGY
Administrative Law Judge
Office of Administrative Hearings