BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT on behalf of STUDENT, v. TEMPLE CITY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2009100194 ORDER GRANTING MOTION TO DISMISS ISSUES

On October 02, 2009, Kathleen M. Loyer, attorney for Student, filed a Due Process Hearing Request[1] (complaint) against Temple City Unified School District (District). On October 12, 2009, Constance M. Taylor, attorney for District, filed a Motion to Dismiss, alleging that the Student's claims are outside the jurisdiction of the Office of Administrative Hearings (OAH). OAH received no response to the Motion to Dismiss from Student.

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 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), or claims based on Section 1983 of Title 42 United States Code.

[1] A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

DISCUSSION

In the present matter, District asserts that Student has filed claims alleging violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), and Section 1983 of Title 42 United States Code. District contends these claims are outside the jurisdiction of OAH.

Student has identified three issues. Each issue begins with, "[Student] contends that Respondents violated IDEA, Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C. § 1983 and denied FAPE when it . . . ." After this opening language, each issue goes on to identify facts and allegations related to alleged IDEA violations, which are within OAH's jurisdiction.

In the closing paragraphs of the complaint, Student states he is providing notice to the District of "violations of § 504 and § 1983" that may be pursued. Student states, "[Student] acknowledges the limited jurisdiction of the OAH and will stipulate to such without need for formal motion."

As discussed above, OAH lacks jurisdiction over claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), and claims based on Section 1983 of Title 42 United States Code.

ORDER

District's Motion to Dismiss is granted. Student's complaint shall proceed forward as to the alleged violations of the IDEA only.

Dated: October 22, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings