

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

GARVEY SCHOOL DISTRICT,
MARYVALE GROUP HOME AND
LOGSDON NONPUBLIC SCHOOL.

OAH CASE NO. 2009120683

ORDER GRANTING MOTION TO
DISMISS

On December 09, 2009, Janeen Steel, attorney for Student, filed a Request for Due Process Hearing (complaint), against the Garvey School District (District), the Maryvale Group Home (Maryvale) and the Logsdon Nonpublic School (Logsdon). On January 12, 2010, District filed a Motion to Dismiss, asserting that the Office of Administrative Hearings (OAH) does not have jurisdiction. OAH received no response to the motion 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), (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.); the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101 et seq.); or the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

Student's complaint raises five separate issues, Issues A through E. District moves to dismiss Issues B, C, D, and E on the grounds that OAH does not have jurisdiction to entertain those claims.

Student's Issue B alleges that District, Maryvale and Logsdon violated Student's rights under Section 504 of the Rehabilitation Act. Student's Issue C alleges that District violated Student's rights under Title II of the ADA. Student's Issue D alleges that Maryvale and Logsdon violated Student's rights under Title III of the ADA. Student's Issue E alleges that District, Maryvale and Logsdon violated Student's rights under the Unruh Civil Rights Act.

OAH's jurisdiction is limited to matters involving the 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. OAH does not have jurisdiction to entertain Student's Issues B, C, D and E.

ORDER

District's Motion to Dismiss Issues B, C, D and E of Student's complaint is granted. The matter will proceed as scheduled as to Issue A.

Dated: January 26, 2010

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings