

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

EAST WHITTIER CITY SCHOOL  
DISTRICT.

OAH CASE NO. 2010011149

ORDER GRANTING MOTION TO  
DISMISS ISSUES

On January 26, 2010, Student filed a Request for Due Process Hearing (complaint), naming East Whittier City School District (District) as respondent.

On February 3, 2010 filed a Motion to Dismiss Issues, alleging that The Office of Administrative Hearings lacks jurisdiction to hear cases under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701) (Section 504) and/or claims of discrimination under Title II of the American's with Disabilities Act of 1990 (ADA) (Title 42 U.S.C. §§ 1201, et seq.).

On February 4, 2010, Student filed opposition to District's Motion.

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.) and/or Section 1983 of Title 42 United States Code and/or (ADA) (Title 42 U.S.C. §§ 1201, et seq.).

## DISCUSSION

Student's complaint alleges in paragraph 2B. of his complaint that District has violated Student's rights under Title II of the ADA. In paragraph 2C. of the complaint Student alleges District has violated Student's rights under Section 504. District contends that OAH lacks the authority to hear cases under either of these statutes and that issue 2B. and 2C. of Student's complaint must be dismissed. Student argues that his complaint alleges sufficient facts upon which relief may be awarded under IDEA. Further Student cites several cases in support of the proposition that Student must exhaust all administrative remedies under IDEA to proceed with his Section 504 and ADA claims in U.S. District Court. Student's argument fails because as set forth above the jurisdiction of OAH is limited to 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. Both of Student's claims under Section 504 and the ADA do not pertain to issues of FAPE and OAH has no jurisdiction to order a remedy for violations of these statutes. District's motion is granted as to issues 2B. and 2C. of the complaint.

## ORDER

1. District's Motion to dismiss as to issues 2 B. and 2 C. of the complaint is granted.
2. The matter will proceed as scheduled on the remaining issues in the complaint.

IT IS SO ORDERED

Dated: February 10, 2010

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings