

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010080522

ORDER GRANTING MOTION TO
DISMISS CLAIMS

On August 12, 2010, Student filed a Request for Due Process Hearing (complaint) against Newport Mesa Unified School District (District). On August 20, 2010, the District filed a Motion to Dismiss portions of Student's claims that alleged that the District violated Section 504 of the Rehabilitation Act (Section 504) and Section 1983 of title 42 United States Code (Section 1983). Student did not submit a response.

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 Section 1983 of title 42 United States Code.

DISCUSSION

In this matter, Student alleges in all three issues for hearing that the District denied him a FAPE under the Individuals with Disabilities Education Act, and that the District violated Section 504 and Section 1983. Because OAH does not have jurisdiction to hear Student's claims that the District violated Section 504 and Section 1983, these claims are dismissed.

ORDER

The District's Motion to Dismiss is granted as to Student's claims alleging violations of Section 504 and Section 1983. All dates remain on calendar.

IT IS SO ORDERED.

Dated: August 26, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings