

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL
DISTRICT; LOS ANGELES COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2010090051

ORDER GRANTING MOTION TO
DISMISS

On August 30, 2010, Student filed a request for due process hearing (complaint), naming Bellflower Unified School District (District), and the Los Angeles County Office of Education (LACOE), as respondents. The complaint alleges six issues. Issue Three sets forth a claim arising under Section 504 of the Rehabilitation Act of 1973 (Section 504). Issues Four and Five allege violations of the American with Disabilities Act (ADA). Issue Six alleges Unruh Act violations. On September 15, 2010, LACOE filed a motion to dismiss issues three, four, five, and six, contending that the Office of Administrative Hearings (OAH) lacks jurisdiction to hear Section 504, ADA, and Unruh Act claims. On September 20, 2010, Student filed an opposition to LACOE's motion, contending that OAH is the appropriate tribunal for these claims. LACOE is correct.

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.), the ADA, or the Unruh Act.

DISCUSSION

As set forth above, the jurisdiction of OAH is limited to matters related to the identification, evaluation, or educational placement of a child, or to the provision of FAPE, under the authority of the IDEA. As such, OAH does not have jurisdiction to entertain Section 504, ADA, or Unruh Act claims. Accordingly, LACOE's motion to dismiss Issues, Three, Four, Five, and Six is granted.

ORDER

Issues Three, Four, Five, and Six of Student's complaint are hereby dismissed.

IT IS SO ORDERED.

Dated: September 21, 2010

/s/

CARLA L. GARRETT
Administrative Law Judge
Office of Administrative Hearings