

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011040915

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS ISSUES
THREE, FOUR, AND FIVE OF
AMENDED DUE PROCESS
COMPLAINT WITH PREJUDICE

On June 29, 2011, Student, through her Educational Rights Holder (hereafter Student) filed an amended due process complaint naming the Torrance Unified School District (District). Student's amended complaint contains five issues. Issues one and two allege, inter alia, that the District failed to provide Student with a free appropriate public education during two specific school years. The parties settled these two issues in a final settlement agreement. In a separate Order, the Office of Administrative Hearings (OAH) has dismissed issues one and two with prejudice based upon Student's unopposed motion to dismiss.

Student's issue three alleges that the District discriminated against her in violation of Title II of the Americans with Disabilities Act (ADA). In issue four, Student alleges that the District discriminated against her in violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.; herein Section 504). In issue five, Student alleges that the District discriminated against her in violation of the state Unruh Act. On July 21, 2011, the District filed a motion to dismiss issues three, four and five. The basis for the District's motion is that OAH has no jurisdiction over matters brought under the ADA, Section 504, or the Unruh Act. Student has not filed an opposition or otherwise responded to the District's motion.

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, the ADA, or state civil rights statutes such as the Unruh Act. Because no jurisdiction lies with OAH to hear these matters, the District's motion to dismiss Student's issues three, four, and five of Student's amended due process complaint, is granted with prejudice. Since OAH has also dismissed issues one and two of the amended complaint with prejudice, there are no remaining issues to adjudicate.

ORDER

1. The District's motion to dismiss issues three, four, and five of Student's amended complaint is granted with prejudice.
2. All dates in this matter are hereby vacated and the matter is dismissed in its entirety.

Dated: July 29, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings