

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011080358

ORDER GRANTING MOTION TO  
DISMISS

On August 10, 2011, Parents on behalf of Student filed a Due Process Hearing Request (complaint) naming the Norwalk-La Mirada Unified School District (District) as respondent. On August 19, 2011, the District filed its response to the complaint and a motion to dismiss Student’s allegations made pursuant to Section 504 of the Rehabilitation Act (504) and Section 1983 of Title 42 of the United States Code (1983). In the complaint, Student alleges three issues<sup>1</sup> under the Individuals with Disabilities Education Act (IDEA) as well as under 504 and 1983. The District requests that allegations under 504 and 1983 be dismissed as outside of OAH jurisdiction.

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.)

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<sup>1</sup> The complaint numbers these issues as one, two and four. The complaint does not include an issue three.

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 Section 1983 of Title 42 United States Code.

ORDER

District's Motion to Dismiss is GRANTED and all allegations under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and Section 1983 of Title 42 United States Code are hereby dismissed. The matter will proceed as scheduled with regard to Student's issues alleged to be violations of the IDEA.

IT IS SO ORDERED.

Dated: August 25, 2011

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings