

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011100490

ORDER GRANTING MOTION TO
DISMISS

On October 14, 2011, Student filed a Request for Due Process Hearing (complaint), naming District as the respondent. Student alleged denials of FAPE under the IDEA (20 U.S.C. § 1400 et seq.) beginning October 2009 regarding certain assessments, IEPs, placements, and related services. Student also alleged claims under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, and a claim for money damages under Government Code sections 810 and 910. On October 31, 2011, District filed a Motion to Dismiss all allegations that did not arise under the IDEA, on the ground OAH does not have jurisdiction. Student did not file an opposition to the 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) [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].) OAH’s jurisdiction is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH only has jurisdiction over alleged violations of the IDEA and corresponding state law. Student’s claims in the complaint are proper to the extent they concern the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child, beginning October 2009. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501) However, as to the remaining issues, 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.), Section 1983 of Title 42 United States Code, and the claims for money damages under the Government Code, and as such, they should be dismissed.

ORDER

1. District's Motion to Dismiss the claims under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, and Government Code sections 810 and 910 is granted for lack of jurisdiction.

2. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: November 08, 2011

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings