

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JOSE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2011110048

ORDER GRANTING MOTION TO  
DISMISS ISSUE 41

On November 1, 2011, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the San Jose Unified School District (District) as the respondent.

On November 14, 2011, the District filed a Motion for Partial Dismissal, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear issue 41 which alleges that the District violated Section 504 of the Rehabilitation Act of 1973. OAH received no response to the District's motion.

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.) Thus, 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.

ORDER

1. The District's motion to dismiss Issue 41 is granted.
2. All previously scheduled dates shall remain on calendar.

IT IS SO ORDERED.

Dated: November 18, 2011

/s/

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings