

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011110175

ORDER GRANTING MOTION TO
DISMISS

On November 3, 2011, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Newport-Mesa Unified School District (District) as the respondent.

On November 11, 2011, the District filed a pleading responding to Student's complaint also containing a notice of insufficiency and a motion to dismiss issues, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and "any related state and federal civil rights laws." This order deals solely with the District's motion to dismiss issues.

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

District's Motion to Dismiss is granted. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: November 15, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings