

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012050590

ORDER GRANTING MOTION TO
DISMISS STUDENT’S ISSUE SIX

On May 15, 2012, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming Orange Unified School District (District). On May 21, 2012, the District filed a Motion to Dismiss Student’s Issue Six claiming the Office of Administrative Hearings (OAH) lacks jurisdiction to decide said issue. Student did not file an opposition to the 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.)

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.

DISCUSSION

In application of the authority cited above, Issue Six of Student’s complaint specifically alleges violations of Section 504 of the Rehabilitation Act of 1973. As such,

OAH has no jurisdiction to decide this issue, and therefore Issue Six must be dismissed.

ORDER

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

IT IS SO ORDERED.

Dated: May 29, 2012

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings