

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050785

ORDER GRANTING MOTION TO
DISMISS NON-IDEA CLAIMS

On May 17, 2012, Student filed a Request for Due Process Hearing (complaint). On May 29, 2012, District filed a motion to partially dismiss issues in the complaint on the grounds that Student sought relief that was outside Office of Administrative Hearings (OAH) jurisdiction. Student did not file a response.

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.) (Section 504), or Section 1983 of Title 42 United States Code (Section 1983). Here, each of the three issues in the complaint alleges violations of Section 504 and Section 1983 in addition to violations of the IDEA.

Accordingly, District's motion is granted as to those allegations and claims outside of the IDEA. All references to Section 504 and Section 1983 are stricken from the complaint and dismissed. Claims one through three shall proceed to hearing on the alleged violations of the IDEA only. All dates shall remain as scheduled unless otherwise ordered.

IT IS SO ORDERED.

Dated: June 4, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings