

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CLAREMONT UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012070097

ORDER GRANTING MOTION TO
DISMISS ISSUES

On July 17, 2012, Parent on behalf of Student (Student) filed an Amended Request for Due Process Hearing (complaint), naming the Claremont Unified School District (District) as the respondent. The complaint alleges three issues. Issue Three avers that the District action violated Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and California's Unruh Act.

On August 8, 2012, the District filed 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 California's Unruh Act.

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

The District's Motion to Dismiss Issues made pursuant to Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and the Unruh Act is GRANTED. Issue Three is hereby dismissed. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

Dated: August 13, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings