

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. 2012110040

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS

On November 9, 2012, the Newport-Mesa Unified School District (District) filed a partial motion to dismiss, seeking dismissal of Issue 4 of Student's complaint. No opposition has been received.

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 the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

Student's complaint alleges at Issue 4 that the District, by its actions in not providing a FAPE to Student, also denied Student his rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)), the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq. (ADA)), and the Unruh Civil Rights Act (Civ. Code, § 51). OAH does not have jurisdiction to hear claims brought under Section 504, the ADA or the Unruh

Civil Rights Act. Accordingly, District's motion to dismiss Issue 4 of Student's complaint is granted.

ORDER

1. District's motion to dismiss Issue 4 of Student's complaint is granted.
2. The matter will proceed as scheduled as to the remaining issues.

Dated: November 16, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings