

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012120333

ORDER GRANTING PARTIAL  
MOTION TO DISMISS

On December 10, 2012, Student filed a Request for Due Process Hearing (complaint), naming Capistrano Unified School District (District) as the respondent.

On December 21, 2012, District filed a Partial Motion to Dismiss. District's motion addresses Student's claims for violation of the Civil Rights Act, 42 U.S.C. Section 1983, Section 504 of the Rehabilitation Act of 1973, and related state and federal civil rights laws. District moves to dismiss these claims on the grounds OAH does not have jurisdiction over them. OAH received no response to the Partial Motion to Dismiss from Student.

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

Student's complaint states three issues. Each issue alleges District violated the IDEA, and that District violated section 504 of the Rehabilitation Act of 1973 (Section 504) and the Civil Rights Act under 42 U.S.C. § 1983 (Section 1983). Student's first issue alleges District failed to properly assess Student. Although issues related to a violation of Section 504 and Section 1983 are not within OAH's jurisdiction, the IDEA claim District failed to properly assess Student is within OAH's jurisdiction. Student's second issue alleges District failed to develop a comprehensive IEP including appropriate levels of services, appropriate goals to address all of Student's needs, and a transition plan for high school. Here again, violation of Section 504 and Section 1983 are not within OAH's jurisdiction, however, the claim District failed to develop an appropriate IEP is within OAH's jurisdiction. Student's third issue alleges District failed to provide measurable postsecondary goals, transition assessments, and transitional services to assure Student's transition to a comprehensive campus and to the adult world. Although each issue alleges a violation of Section 504 and Section 1983, each of Student's issues state a claim under the IDEA that is within OAH's jurisdiction. Accordingly, District's Partial Motion to Dismiss claims based upon Section 504 and Section 1983 is granted and only those claims are dismissed.

## ORDER

1. District's Partial Motion to Dismiss is granted as to Student's claims for violation of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and Section 1983 of Title 42 United States Code.
2. The matter will proceed as scheduled as to the remaining issues.

Dated: December 27, 2012

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings