

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. 2013050172

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS

On May 13, 2013, District filed a Partial Motion to Dismiss (Motion) Issues One, Two and Three of the due process complaint to the extent those issues seek redress under Section 504 of the Rehabilitation Act of 1973 and the civil rights act under 42 U.S.C. § 1983. Student did not file an opposition. The Motion is granted for the reasons stated below.

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.) and Section 1983 of Title 42 United States Code.

Although special education law does not provide for a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, incorrect parties, etc.....).

DISCUSSION AND ORDER

Here, in addition to allegations that the District violated provisions under IDEA, Student's due process complaint alleges in Issues One, Two, and Three that the District violated "Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C. section 1983, and denied FAPE under...Section 504..." Thus, on its face, the complaint alleges violations that are facially outside of OAH jurisdiction. Accordingly, the motion is granted and all claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and Section 1983 of Title 42 United States Code shall be stricken from the complaint and dismissed. The matter shall proceed to hearing on the remaining issues as modified in this order.

All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: May 20, 2013

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings