

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013060346

ORDER GRANTING MOTION TO
DISMISS ISSUE 12

On June 7, 2013, Student filed this Due Process Hearing Request (complaint) naming the Irvine Unified School District (District) as the respondent.

On June 17, 2013, District filed a motion to dismiss Issue 12 in Student’s complaint on the ground that the Office of Administrative Hearings (OAH) lacks jurisdiction to hear the issue. Student did not file a response to 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.)

OAH does not have jurisdiction to entertain claims based on statutes such as Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code, the Americans with Disabilities Act, or the Unruh Act.

DISCUSSION

District alleges that OAH lacks jurisdiction to entertain Student's Issue 12 because the issue falls outside of IDEA OAH's jurisdiction or the California special education laws. OAH agrees with District's contention as discussed below.

Student's Issue 12 contends that District "*violated the prohibition on disability-based discrimination contained in Section 504 of the Rehabilitation Act of 1973*". In this issue, Student alleges that District denied him meaningful access to the benefit of public education and failed to provide him with sufficient educational programs when compared to the educational program(s) of his nondisabled peers. Thus, in Issue 12 Student alleges disability discrimination under Section 504 of the Rehabilitation Act of 1973 (Section 504).

As framed, Student's alleged violation in Issue 12 regarding disability discrimination under Section 504 is beyond OAH's jurisdiction because OAH does not hear or resolve disputes arising out of Section 504. As discussed above, OAH's jurisdiction is limited to disputes arising out of the IDEA and the California implementing laws, including those relating to the 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, among others. Thus, OAH lack jurisdiction to hear Issue 12 in Student's complaint, and accordingly, District's motion to Dismiss Issue 12 must be granted.

ORDER

1. District's motion to dismiss Student's Issue 12 is granted.

IT IS SO ORDERED.

Dated: June 28, 2013

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings