

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MENIFEE UNION ELEMENTARY
SCHOOL DISTRICT.

OAH CASE NO. 2013070464

ORDER GRANTING MOTION TO
DISMISS SPECIFIC CLAIMS AND
MOTION TO STRIKE SPECIFIC
PROPOSED RESOLUTIONS

On July 11, 2013, Student filed a Request for Due Process Hearing (complaint), with the Office of Administrative Hearings (OAH), naming the Meniffee Union Elementary School District (District). On July 22, 2013, the District filed a Motion to Dismiss and Motion to Strike, alleging that certain of Student's claims and proposed resolutions are outside the scope of OAH's jurisdiction. On July 24, 2013, Student filed an opposition.

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.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), and the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

The District requests that OAH dismiss Student's claims that it violated Section 504, Section 1983, the ADA and the Unruh Act as OAH lack jurisdiction to adjudicate these claims. Student contends that OAH may hear civil rights claims related to alleged violations of the IDEA. However, the cases that Student cites in support of this position involve issues of administrative exhaustion and when a student may file an action directly in federal court without going through the administrative hearing process. None of the cited cases stand for the proposition that OAH has the authority to adjudicate alleged violations of Section 504, Section 1983, the ADA and the Unruh Act related to the provision or failure to provide special education services. Therefore, Student's claims that the District violated Section 504, Section 1983, the ADA and the Unruh Act are dismissed as OAH does not have jurisdiction to adjudicate these claims.

The District also requests that OAH strike Student's proposed resolutions 8 through 13 because OAH does not have the authority to award monetary or punitive damages. Again, cases cited by Student for the proposition that OAH may award monetary or punitive damages are not applicable as the case apply to federal court filings that do have jurisdiction over Section 504, Section 1983, the ADA and the Unruh Act claims. (See *Thompson v. Bd. of Special School Dist. No. 1* (8th Cir. 1998) 144 F.3d 574, 580; *Stassart v. Lakeside Joint School Dist.* (N.D.Cal. 2009, No. C 09-1131 JF (HRL)) 2009 WL 3188244, *14.) Therefore, Student's proposed resolutions 8 through 13 that seek monetary and punitive damages are stricken.

ORDER

1. Student's claims that the District violated Section 504, Section 1983, the ADA and the Unruh Act are dismissed.
2. Student's proposed resolutions 8 through 13 are stricken.
3. The matter will proceed as scheduled as to the remaining issues and proposed resolutions.

Dated: July 25, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings