

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013080961

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS
ALLEGATIONS 16 AND 17

On August 21, 2013, Parents on behalf of Student (Student) filed a request for due process hearing (complaint) naming the Capistrano Unified School District (District) as respondent.

On August 30, 2013, the District filed a Motion for Partial Dismissal, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear Allegations 16 and 17, as these claims are based on Section 504 of the Rehabilitation Act of 1973. In Allegation 16, Student contends that the "District treatment of Student violates the prohibition on disability based discrimination contained in Section 504 of the Rehabilitation Act of 1973 (Section 504)." Student contends in Allegation 17 that the District subjected Student and his parents to retaliation in violation of Section 504.

OAH received no response to the 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.) Thus, 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.). Thus, OAH lacks jurisdiction to hear Allegations 16 and 17.

ORDER

The District's Motion to Dismiss Allegations 16 and 17 is GRANTED. All such claims are hereby dismissed. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

Dated: September 10, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings