

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090682

ORDER GRANTING MOTION TO
DISMISS ALLEGATIONS 18 AND 19

On September 20, 2013, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Garden Grove Unified School District (District) as the respondent. The complaint contains 19 allegations or claims. Allegation 18 alleges that the District has violated Section 504 of the Rehabilitation Act of 1973 (Section 504)¹ by discriminating against Student because of her disability. In Allegation 19, Student avers that the District has retaliated against Student because of her disability in violation of Section 504.

On September 26, 2013, the District filed a Motion for Partial Dismissal, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear Allegations 18 and 19, which are based on 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

¹ 29 U.S.C. § 701 et seq.

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 Allegations 18 and 19 which are solely based on Section 504.

ORDER

The District's Motion to Dismiss Allegations 18 and 19, which were made pursuant to Section 504 of the Rehabilitation Act of 1973, is GRANTED. Allegations 18 and 19 are hereby dismissed. The matter will proceed as scheduled with regard to the remaining allegations.

IT IS SO ORDERED.

Dated: October 3, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings