

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALTA LOMA SCHOOL DISTRICT.

OAH CASE NO. 2013120334

ORDER DENYING DISTRICT'S
MOTION TO DISMISS ISSUE 1 AND
DISMISSING ISSUES 2 THROUGH 7
FOR FAILURE TO STATE A CLAIM
WITHIN OAH JURISDICTION

Parent on Student's behalf filed a request for due process (complaint) on December 9, 2013 naming Alta Loma School District (District). On December 12, 2013, counsel for District filed a motion to dismiss Issue 1 of Student's complaint on the ground that it failed to raise a claim within the jurisdiction of the Office of Administrative Hearings (OAH), and, generally, claims falling outside of OAH jurisdiction. OAH did not receive a response to the motion from Student. For the reasons discussed below, the motion is denied as to Issue 1, and Issues 2 through 7 are dismissed.

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 504), Section 1983 of Title 42 United States Code (Section 1983), and related state and federal statutes and regulations.

DISCUSSION AND ORDER

The seven issues articulated in Student's complaint are based upon the fact that District did not find Student eligible for the school honor roll. All issues but Issue 1 allege violations of some or all of the following: Section 504, Section 1983, and related state and federal statutes and regulations.

In Issue 1, which District challenges as outside of OAH jurisdiction, Student alleges that the District denied him a FAPE by denying him placement in an appropriate academic program that would enable him to be eligible for school honor roll. Student alleges that District did not provide him with an educational program that met his full range of needs but, instead, acted in a discriminatory manner by disqualifying him from the honor roll because of disability-related behavioral ratings. While District contends that this claim is outside of OAH jurisdiction based upon Student's allegations of discrimination, Student does allege facts that relate to his placement and educational program, thereby making a claim that relates to the identification, assessment or educational placement of a student. Student is entitled to findings by the hearing judge on this issue. Accordingly, District's motion is denied as to Issue 1.

District did not specifically seek dismissal of Issues 2 through 7, but instead generally objected to claims that fall outside of OAH jurisdiction. Issues 2 through 7 each raise claims that are exclusively outside of OAH jurisdiction. Specifically, Issue 2 alleges discrimination under Section 504; Issue 3 alleges discrimination under Title II of the American with Disabilities Act; Issue 4 alleges discrimination constituting a denial of FAPE under Section 504; Issue 5 alleges discrimination under California Civil Code section 51; Issue 6 alleges discrimination under Government Code section 11135; and Issue 7 alleges retaliation in violation of Section 504.

Accordingly, Issues 2, 3, 4, 5, 6, and 7 of the complaint are dismissed on the ground that they do not allege a denial of FAPE under any provision of the IDEA and are therefore outside of OAH jurisdiction. All reference to Section 504, Section 1983, and any related state and federal statutes and regulations are stricken from the complaint and dismissed. Issue 1 shall proceed to hearing on the alleged violations of the IDEA only. All dates shall remain as scheduled unless otherwise ordered.

IT IS SO ORDERED.

Dated: December 18, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings