

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014020058

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS

On January 30, 2014, Parent on behalf of Student filed a due process hearing request (complaint) naming the Irvine Unified School District (District).

On February 10, 2014, District filed a motion to dismiss Allegation #12 of Student's complaint, which alleges that District violated Title V of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)) by discriminating against students with individualized education programs (IEP's). No opposition has been filed.

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 the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

Student's complaint alleges that District set lower expectations and offered less opportunities to Student because she is a student with autism. It also alleges that District refused to provide in-home programs, such as the one needed by Student, to all students with

IEP's. Student alleges, at Allegation #12, that District's conduct discriminated against her on the basis of her disability, in violation of anti-discrimination provisions of Section 504.

OAH does not have jurisdiction to hear claims brought under Section 504. Accordingly, District's partial motion to dismiss Allegation #12 of Student's complaint is granted.

ORDER

1. District's motion to dismiss Allegation #12 of Student's complaint is granted.
2. The matter will proceed as scheduled as to the remaining issues.

DATE: February 18, 2014

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings