

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014040244

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On April 2, 2014, Student filed a Request for Due Process Hearing (complaint), naming Garden Grove Unified School District (Garden Grove) as the respondent.

On April 14, 2014, Garden Grove filed a Partial Motion to Dismiss. Garden Grove's motion addresses Student's Issue 13 (discrimination in violation of Section 504 of the Rehabilitation Act of 1973) and Issue 14 (retaliation in violation of Section 504 of the Rehabilitation Act of 1973). Garden Grove moves to dismiss Issues 13 and 14 on the grounds that the Office of Administrative Hearings (OAH) does not have jurisdiction over them. OAH received no response to the Partial Motion to Dismiss from Student.

APPLICABLE LAW AND DISCUSSION

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.).

Student's complaint alleges 14 issues. Issue 13 alleges that Garden Grove violated Section 504 of the Rehabilitation Act of 1973 when it discriminated against Student and his family because of Student's and his siblings' disabilities. Issue 14 alleges Garden Grove violated Section 504 of the Rehabilitation Act of 1973 by retaliating against Student and his family for his parents' advocacy on behalf of their children. Issues related to a violation of Section 504 of the Rehabilitation Act of 1973 are not within OAH's jurisdiction. Accordingly, Garden Grove's Partial Motion to Dismiss Issues 13 and 14 is granted and those claims are dismissed.

ORDER

1. Garden Grove's Partial Motion to Dismiss is granted as to Student's Issues 13 and 14.
2. The matter will proceed as scheduled as to the remaining issues.

DATE: April 23, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings