

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. 2014050146

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS ALLEGATION
17 AND GRANTING MOTION TO
STRIKE PROPOSED REMEDY 7

On May 1, 2014, Parent on behalf of Student filed a due process hearing request (complaint) naming the Garden Grove Unified School District (District).

On May 12, 2014, District filed a motion to dismiss Allegation #17 of Student's complaint, which alleges that District violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 (Section 504)) by discriminating against Student on the basis of his disability. District's motion also seeks to strike Student's proposed remedy #7 for monetary damages and injunctive relief under Section 504. 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 failed to identify all of Student's educational needs, failed to provide Student with an appropriate educational program, and failed to educate Student in the least restrictive environment, by essentially segregating Student, who is non-verbal, on a special education campus and failing to address Student's communication and other educational needs. Student alleges, at Allegation #17, that District was deliberately indifferent to the needs of disabled students, which resulted in discrimination against Student on the basis of his disability in violation of anti-discrimination provisions of Section 504. At proposed remedy #7, Student seeks "monetary damages and injunctive relief based on Section 504 violations."

OAH does not have jurisdiction to hear discrimination claims brought under Section 504, or to award monetary damages or injunctive relief not provided for under the IDEA. Accordingly, District's motion to dismiss Allegation #17, and to strike proposed remedy #7, from Student's complaint is granted.

ORDER

1. District's motion to dismiss Allegation #17 of Student's complaint is granted.
2. District's motion to strike remedy #7 from Student's complaint is granted.
2. The matter will proceed as scheduled as to the remaining issues.

DATE: May 16, 2014

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings