

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2014050985

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS

On May 19, 2014, Parent on behalf of Student filed a due process hearing request (complaint) naming Orange Unified School District (District).

On May 29, 2014, District filed a partial motion to dismiss, seeking dismissal of those portions of Student's complaint alleging that District violated Student's rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)), the Americans with Disabilities Act (42 U.S.C. 12101 et seq. (ADA)), 42 United States Code section 1983 (Section 1983), the No Child Left Behind Act of 2001 (20 U.S.C. § 6301, et seq. (NCLB)), and related federal and state law. No opposition has been received.

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 two claims: that from March 2013, District violated the IDEA, Section 504, the ADA, Section 1983, NCLB and related federal and state laws by (1) failing to identify Student's needs and present levels of performance, develop meaningful goals, or offer appropriate special education and services, and by (2) failing to adequately assess Student or implement her services due to inadequately trained assessors and staff.¹

OAH does not have jurisdiction to hear claims brought under Section 504, the ADA, Section 1983, NCLB or related non-IDEA federal or state laws. Accordingly, District's partial motion to dismiss the portions of Student's complaint arising under non-IDEA statute is granted.

ORDER

1. District's partial motion to dismiss those portions of Student's complaint arising under Section 504, the ADA, Section 1983, NCLB and non-IDEA related federal and state laws is granted.
2. The matter will proceed as scheduled as to the remaining issues.

DATE: June 04, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings

¹ Student's complaint confusingly designates the second of her two claims as "Issue #4."