

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. 2014051090

ORDER GRANTING DISTRICT'S
PARTIAL MOTION TO DISMISS

On May 20, 2014, Parent on behalf of Student filed a due process hearing request (complaint) naming Irvine Unified School District (District).

On May 30, 2014, District filed a partial motion to dismiss, seeking dismissal of those portions of Issue One 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)), and civil rights under 42 United States Code section 1983 (Section 1983). 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 one claim: that from November 2012, District violated the IDEA, Section 504, the ADA and Section 1983 by (1) failing to offer appropriate special

education and services, in particular by failing to consider Student's weight, size and functional level in advancing him to a middle school campus.

OAH does not have jurisdiction to hear claims brought under Section 504, the ADA or Section 1983. Accordingly, District's partial motion to dismiss the portions of Issue One Student's complaint arising under non-IDEA statutes is granted.

ORDER

1. District's partial motion to dismiss those portions of Issue One of Student's complaint arising under Section 504, the ADA and Section 1983 is granted.
2. The matter will proceed as scheduled as to the remaining portions of Issue One.

DATE: June 5, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings