

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015020736 (Primary)
PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015010656
LONG BEACH UNIFIED SCHOOL DISTRICT v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2015030395 ORDER GRANTING MOTION TO DISMISS ISSUES FOUR AND FIVE OF STUDENT’S SECOND COMPLAINT

Student filed requests for due process on January 16, 2015, (first complaint), and February 17, 2015, (second complaint), naming the Long Beach Unified School District. Long Beach Unified filed a request for due process on March 6, 2015, naming Student. The Office of Administrative Hearings consolidated the three complaints in an Order dated March 13, 2015.

On April 20, 2015, Long Beach Unified filed a motion to dismiss issues four and five of Student’s second complaint and the proposed resolutions that correspond to those issues. Long Beach Unified contends that the issues are outside the jurisdiction of OAH to decide because they allege violations of Section 504 the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act (ADA) (42 U.S.C. §§ 12101 et seq.), and the California Unruh Act (Civ.Code, § 51.)

Student has not filed an opposition or other responsive pleading to Long Beach Unified's motion.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” 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, the ADA, or the Unruh Act. Therefore, issues four and five of Student's complaint, along with all requests for resolution related to those allegations, must be dismissed from the case.

ORDER

Long Beach Unified's motion to dismiss is granted as to issues four and five of Student's second complaint, along with any proposed resolutions related those issues. Those two issues are hereby dismissed. The matter will proceed as scheduled as to the remaining issues.

DATE: May 4, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings