

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH Case No. 2015040196

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS ISSUES 3, 4
AND 5

On April 9, 2015, Westminster School District filed a motion to dismiss Issues 3, 4 and 5 from Student's complaint. No opposition was 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" 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. (Section 504)).

DISCUSSION

Student's due process hearing request (complaint) alleges that she is a student eligible for special education under the IDEA as a result of her disability of autism, but that District failed to find her eligible. Student alleges five claims: that District (1) denied her a FAPE by not finding her eligible for special education and related services, (2) denied Student a FAPE by not providing her with special education and related services, (3) failed to meet its child find obligations under Section 504, (4) failed to notify Parents of their rights under

Section 504, and (5) violated Section 504 by excluding Student from a District preschool program.

Student's Issues 3, 4 and 5 arise under Section 504, and OAH lacks jurisdiction to adjudicate Section 504 claims. Therefore, these issues cannot be heard in this due process proceeding and must be dismissed.

ORDER

1. Issues 3, 4 and 5 of Student's complaint are dismissed.
2. This matter shall proceed to hearing on Issues 1 and 2 of Student's complaint only.

IT IS SO ORDERED.

DATE: April 22, 2015

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings