

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH Case No. 2015071141

ORDER GRANTING MOTION TO
DISMISS ISSUE 13

On July 14, 2015, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing naming the Tustin Unified School District. The complaint contains 13 issues which are referred to as allegations. Issue 13 alleges that Tustin “discriminated against [Student] in violating Section 504 of the Rehabilitation Act of 1973.”

On July 24, 2015, Tustin filed a Motion to Dismiss Issue 13, alleging that the Office of Administrative Hearings is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973.

OAH received no response to the District’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.) Thus, 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.) of the United States Code.

ORDER

Tustin's Motion to Dismiss Issue 13 is GRANTED. The matter will proceed as scheduled against the remaining issues.

IT IS SO ORDERED.

DATE: July 31, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings