

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NORWALK-LA MIRADA UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015101022

ORDER GRANTING MOTION TO
DISMISS ISSUES OUTSIDE
JURISDICTION OF THE OFFICE OF
ADMINISTRATIVE HEARINGS

On October 27, 2015, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Norwalk-La Mirada Unified School District.

On November 6, 2015, Norwalk-La Mirada filed a Motion to Dismiss, alleging that the Complaint raises concerns beyond the jurisdiction of OAH.

OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

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.)

DISCUSSION

In the present matter, Student's complaint specifically identifies six issues which involve whether Norwalk-La Mirada denied Student a FAPE and are appropriately within OAH's jurisdiction. However, the introduction to Student's complaint states that the complaint "shall be construed to include the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990 [42 U.S.C.A. § 12101 et seq.], title V of the Rehabilitation Act of 1973 [29 U.S.C.A. § 791 et seq.], or other Federal laws protecting the rights of children with disabilities, which require before the filing of a civil action under such laws seeking relief that is also available. (20 U.S.C. § 1415(1))." Because OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.), or the Constitution, to the extent Student is also raising claims under these laws, they are dismissed.

ORDER

Norwalk-La Mirada's Motion to Dismiss is granted as to all issues arising under Section 504, the ADA and the Constitution. The matter will proceed as scheduled as to the remaining issues related to the IDEA or Education Code section 56000 et seq.

IT IS SO ORDERED.

DATE: November 23, 2015

/s/

LISA LUNSFORD
Administrative Law Judge
Office of Administrative Hearings