

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT AND LOS ANGELES
COUNTY OFFICE OF EDUCATION.

OAH CASE NO. 2013031122

ORDER GRANTING MOTION TO
DISMISS ISSUE NUMBER FOUR

On March 27, 2013, Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Long Beach Unified School District (District) and the Los Angeles County Office of Education (LACOE). On April 8, 2013, LACOE filed a Motion to Dismiss Student’s Issue Number Four on the grounds that compliance with state and federal civil rights laws is outside OAH’s jurisdiction. On April 5, 2013, the District filed a response to Student’s complaint in which it also requests that OAH dismiss Issue Four¹.

APPLICABLE LAW AND DISCUSSION

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;

¹ To further judicial economy, this Order addresses dismissal of Issue Number Four as to both respondents. However, the District is admonished that in the future, it is required to file a separate motion to dismiss rather than requesting this as a part of its response to the complaint. OAH will not search for motions imbedded within pleadings and not properly filed as such.

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.)

Student's Issue Number Four alleges violations of Student's civil rights pursuant to section 1983 of title 42 of the United States Code, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act (ADA) and the Unruh Civil Rights Act. In his complaint, Student acknowledges that he raises this issue for purposes of exhaustion of administrative remedies and anticipates that OAH will not exercise jurisdiction over this issue. OAH does not have jurisdiction in special education matters to entertain claims based upon state civil rights law or federal statutes other than the IDEA. This includes any claims brought under Section 1983, Section 504, the ADA or the Unruh Act. LACOE's motion to dismiss Issue Number Four is granted.

ORDER

1. Student's Issue Number Four is dismissed.

Dated: April 12, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings