

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013070483

ORDER GRANTING MOTION TO
PARTIALLY DISMISS CLAIMS
OUTSIDE OF OAH JURISDICTION

On July 11, 2013, Kathleen M. Loyer, Attorney at Law, representing Parent on behalf of Student (Student), filed a request for due process hearing (complaint) with the Office of Administrative Hearings (OAH) naming the Capistrano Unified School District (District). On July 22, 2013, Sara C. Young, Attorney at Law, representing the District, filed a motion to dismiss portions of Student’s Issues One through Four which allege that the District’s conduct violated Student’s rights under Section 504 of the Rehabilitation Act of 1973, the Civil Rights Act under 42 U.S.C. § 1983, No Child Left Behind, and unspecified related state laws and regulations. Student did not file an opposition.

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” (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; 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 1983 of title 42 United States Code, or the No Child Left Behind Act of 2001 (20 U.S.C. § 6301 et seq.).

DISCUSSION

Student's complaint consists of five issues. To the extent Student alleges a violation of his rights under the IDEA or state education law, OAH has jurisdiction. Issues One through Four each allege, in addition to violations of the IDEA, violations of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of title 42 United States Code, the No Child Left Behind Act of 2001 (20 U.S.C. § 6301 et seq.) and unspecified related state laws and regulations. The District is correct that these claims facially fall outside of OAH jurisdiction. Student has not opposed the dismissal of these claims and acknowledges in his complaint that it is his intent to exhaust all remedies knowing that OAH is likely to dismiss these claims as beyond its jurisdiction. Therefore, the District's motion to partially dismiss Issues One through Four is granted and any claims pursuant to state or federal civil rights laws or the No Child Left Behind Act are dismissed.

ORDER

1. The District's motion to dismiss claims arising under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of title 42 United States Code, the No Child Left Behind Act of 2001 (20 U.S.C. § 6301 et seq.), and related state laws is granted.
2. The matter shall proceed to hearing on the remaining issues.

Dated: July 31, 2013

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings