

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. 2013090572

ORDER GRANTING DISTRICT'S  
MOTION TO DISMISS STUDENT'S  
ALLEGATION #16

On September 11, 2013, Student filed a due process hearing request naming Capistrano Unified School District (District).

On September 26, 2013, District filed a motion to dismiss Student's Allegation #16, brought under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)), as outside the jurisdiction of the Office of Administrative Hearings (OAH). No opposition has been 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" (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).) 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 hear claims brought under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)).

DISCUSSION

Student's complaint alleges that District has, for many years, failed to provide Student with a FAPE through a series of procedural and substantive violations of the IDEA. Student seeks relief for 22 claims, or "allegations," against District for denial of a FAPE. However, Allegation #16 asserts that District "has denied [Student's] right to a free appropriate public

education *under Section 504 and its implementing regulations* and has discriminated against [Student] based on disability.” (Emphasis added).

Although Student’s Allegation #16 makes reference to a “FAPE,” it expressly refers to FAPE obligations imposed by Section 504, not the IDEA, and Section 504’s prohibition against discrimination on the basis of disability. OAH does not have jurisdiction to hear claims brought under Section 504, and so has no jurisdiction to decide Student’s Allegation #16. Accordingly, District’s motion to dismiss Allegation #16 is granted.

#### ORDER

1. District’s motion to dismiss Allegation #16 of Student’s complaint is granted.
2. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: September 27, 2013

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings