

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT AND HUNTINGTON BEACH
UNION HIGH SCHOOL DISTRICT.

OAH Case No. 2014090268

ORDER GRANTING MOTION TO
DISMISS STUDENT’S ISSUE “A”

On January 6, 2015, Parent on behalf of Student filed an Amended Request for Due Process Hearing, naming the Newport-Mesa Unified School District and the Huntington Beach Union High School District.

On January 20, 2015, Newport-Mesa filed a motion to dismiss Student’s issue “A” because it alleges causes of action outside the jurisdiction of the Office of Administrative Hearings. Student has not filed an opposition.

APPLICABLE LAW, DISCUSSION and ORDER

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.)

OAH therefore does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act, or section 1983 of title 42 of the United States Code.

Student's Issue "A" contends that Newport-Mesa is in violation of Section 504 and/or the ADA by failing to provide behavioral services due to discrimination based on Student's disability. OAH does not have jurisdiction to hear claims based on Section 504 or the ADA.

For the foregoing reasons, Newport-Mesa's motion to dismiss Issue "A," is GRANTED. The matter will proceed to hearing as to the remaining issues unless otherwise ordered.

IT IS SO ORDERED.

DATE: January 29, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings