

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120077

ORDER GRANTING MOTION TO
DISMISS ISSUE NO. SIX

On November 30, 2015, Student filed a Request for Due Process Hearing (complaint), naming Oceanside Unified School District as Respondent.

On December 9, 2015, District filed a Motion to Dismiss Issue No. Six of the complaint on the grounds that the Office of Administrative Hearings (OAH) does not have jurisdiction over claims made under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and California civil rights laws. OAH received no response to the Motion to Dismiss.

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; 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.), the Americans with Disabilities Act, or state civil rights laws.

Student's complaint alleges six issues. Issue No. Six alleges that District violated Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and state civil rights laws when District used inappropriate physical restraints on Student and denied him the right to an education in a safe environment with appropriate behavior services. Claims based on violations of Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act and state civil rights laws are not within OAH's jurisdiction. Accordingly, District's Motion to Dismiss Issue No. Six is granted and those claims are dismissed.

ORDER

1. District's Motion to Dismiss is granted as to Student's Issue No. Six.
2. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: December 18, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings