BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017080513 ORDER GRANTING MOTION TO DISMISS ISSUE NUMBER TEN

On January 29, 2018, Antioch Unified School District filed with the Office of Administrative Hearings a Motion to Dismiss issue number ten of Student's second amended due process complaint because the claim is outside the jurisdiction of OAH as Student seeks redress under Section 504 of the Rehabilitation Act of 1973, the American with Disabilities Act, and state civil rights law. Student did not file an opposition.

APPLICABLE LAW

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 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 of 1990 (42 U.S.C. § 12101 et seq.), and state civil rights laws.

Although special education law does not provide for a summary judgment procedure, OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, incorrect parties, etc…..).

DISCUSSION

Here, in addition to allegations that District violated provisions under IDEA, Student's second amended due process complaint alleges in Issue ten that District violated "…Section 504, ADA, and State civil rights laws". Thus, on its face, the complaint alleges violations that are facially outside of OAH jurisdiction. Accordingly, the motion is granted and Issue ten is dismissed.

ORDER

District's Motion to Dismiss Issue ten is granted. The matter will proceed as currently scheduled on the remaining issues in Student's second amended complaint, unless otherwise ordered.

IT IS SO ORDERED.

DATE: February 14, 2018

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Tiffany Gilmartin
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TIFFANY GILMARTIN
Administrative Law Judge
Office of Administrative Hearings