BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2019010646
v.	ORDER GRANTING MOTION TO DISMISS ISSUE TWO AND DENYING REQUEST FOR SANCTIONS
GARVEY SCHOOL DISTRICT.	

On February 14, 2019, Garvey School District filed a Notice of Motions and Motions for Sanctions and Dismissal of Student's Retaliation Claim with the Office of Administrative Hearings. On February 20, 2019, Student filed an opposition. On February 21, 2019, Garvey filed a response to Student's Reply. The basis of Garvey's motion to dismiss is that Student's Issue Two of his due process complaint alleges a claim of retaliation, pursuant to Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, over which OAH has no jurisdiction. The basis of Garvey's request for sanctions is that Student failed to withdraw his claim of retaliation despite Garvey's email correspondence to Student to withdraw the retaliation claim, and despite language in an OAH order in this matter by ALJ Rebecca Freie, dated February 1, 2019, finding Student's complaint sufficiently pled, which also acknowledged that OAH has no jurisdiction over 504 or ADA claims.

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 (Section 504), 29 U.S.C. § 701 et seq., Section 1983 of Title 42 United States Code (Section 1983), the Americans with Disability Act (ADA) (Title 42 U.S.C. §§ 1201, et seq.) or the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

Student's Issue Two states a 504 and ADA claim for retaliation over which OAH has no jurisdiction. Accordingly, Garvey's motion to dismiss Student's retaliation claim, Student's Issue Two, is Granted.

Garvey's argument in support of its request for sanctions is not persuasive. The proper vehicle for dismissal of claims for lack of OAH jurisdiction is a motion to dismiss. Any costs resulting from Garvey's delay in filing of a motion to dismiss and choice to pursue requests for Student to withdraw his retaliation claims are properly borne by Garvey. Accordingly, Garvey's request for sanctions is Denied.

ORDER

1. Garvey's Motion to Dismiss is granted as to Issue Two. The matter will proceed as scheduled as to the remaining issue.

2. Garvey's motion to impose Sanctions for not withdrawing his retaliation claim is denied.

3. The matter shall proceed on dates currently scheduled.

IT IS SO ORDERED.

DATE: February 21, 2019

DocuSigned by:
Rita Defilippis
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RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings