BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2019090404

ORDER GRANTING MOTION TO DISMISS ISSUES 3, 4, 5, AND 6 FOR LACK OF JURISDICTION

On September 11, 2019, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Santa Monica-Malibu Unified School District. The Office of Administrative Hearings is referred to as OAH.

On September 23, 2019, Santa Monica-Malibu filed a Motion to Dismiss Issues 3, 4, 5, and 6, alleging OAH lacks jurisdiction to adjudicate certain issues alleged in the complaint. Santa Monica-Malibu also requested that OAH dismiss proposed resolutions b, c, and d. OAH received no response from Student.

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 free appropriate public education 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 School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

Student alleges six issues. Issues 1 and 2 relate to Student's rights under the Individuals with Disabilities Education Act. Issues 3 and 4 relate to Student's rights under Title II of the Americans with Disabilities Act. Issues 5 and 6 relate to Student's rights under Section 504 of the Rehabilitation Act of 1973. OAH does not have jurisdiction to resolve Issues 3, 4, 5, and 6. Accordingly, Issues 3, 4, 5, and 6 are dismissed.

Student's proposed resolutions b, c, and d request damages and fees under 42 U.S.C. § 12205 and 42 U.S.C. § 794. OAH does not have jurisdiction to award relief under these statutes. Accordingly, Student's proposed resolutions b, c, and d are dismissed.

ORDER

1. Santa Monica-Malibu's Motion to Dismiss is granted as to Issues 3, 4, 5, and 6, and proposed resolutions b, c, and d. The matter will proceed as scheduled as to the remaining issues and proposed resolutions.

IT IS SO ORDERED.

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Cararea Lucier
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DATED: November 21, 2019

Cararea Lucier
Administrative Law Judge
Office of Administrative Hearings