BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT; HUNTINGTON BEACH UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2014090268 ORDER GRANTING MOTION TO DISMISS STUDENT'S ISSUE "A;" ORDER SUA SPONTE DISMISSING STUDENT'S ISSUE "B"

On September 3, 2014, Student filed a Request for Due Process Hearing (complaint), naming the Newport-Mesa Unified School District and the Huntington Beach Union High School District as respondents.

On September 15, 2014, 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 in due process proceedings. Student has not filed an opposition or other response to Newport-Mesa's motion.

APPLICABLE LAW, DISCUSSION and ORDER

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," 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 complaint contains five issues labeled as Issues "A" through "E." 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. In issue "B," Student makes the same allegations as to Huntington Beach. As stated earlier, OAH does not have jurisdiction to hear claims based on Section 504 or the ADA.

Newport-Mesa's motion to dismiss Issue "A," is GRANTED. Because OAH lacks jurisdiction to hear the allegations in Issues "A," and "B," Issue "B" is also dismissed as to Huntington Beach on OAH's motion. The matter will proceed to hearing as to the remaining issues.

IT IS SO ORDERED.

DATE: September 22, 2014

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings