BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017040667
v.	ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS
IRVINE UNIFIED SCHOOL DISTRICT.	

On April 12, 2017, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings, naming Irvine Unified School District.

On April 28, 2017, Irvine filed a motion to dismiss Student's Issues 2 and 9, claiming that OAH did not have jurisdiction to decide them. On May 11, 2017, Student filed a partial opposition to the motion to dismiss, agreeing that OAH did not have jurisdiction over Issue 9, but arguing that it did have jurisdiction over Issue 2.

APPLICABLE LAW

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

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 (42 U.S.C. §§ 1201, et seq.), and the Unruh Civil Rights Act (Civ. Code, § 51).

DISCUSSION

In the present matter, the parties do not dispute that OAH lacks jurisdiction over Issue 9, which alleges that Irvine denied Student and Parent their rights under section 504, the Americans with Disabilities Act, and state civil rights law. Accordingly, Student's Issue 9 is dismissed.

Issue 2 is an allegation that Irvine personnel unilaterally disenrolled Student a few days after Mother enrolled him as a student residing within Irvine's boundaries. Irvine argues that OAH is without jurisdiction to decide this issue. Student claims that OAH has jurisdiction over this issue because disenrollment removed him from an educational placement or the right to an educational placement. If a child is enrolled in a school district, the district has a duty to make an offer of a FAPE. Student also argues that if Irvine disenrolled Student, it means Irvine no longer had a duty to assess Student.

A school district has a duty to offer a FAPE to a student living within its boundaries and eligible for special education. It also has a duty to assess a child living within the boundaries of the district who is suspected of being a child with a disability. If Student was disenrolled by Irvine because it discovered he was not a resident, it was not required to assess him or to hold an IEP team meeting and make him an offer of placement and services to meet his unique needs and to provide him with a FAPE. If Student was improperly disenrolled, in spite of being a resident, this could be found to be an act by Irvine that was intended to deny him a FAPE. Provision of a FAPE to a child that is eligible for special education is within the jurisdiction of OAH. Assessment of a child is also within the jurisdiction of OAH. Accordingly, Irvine's motion to dismiss Issue 2 is denied.

ORDER

1. Irvine's motion to dismiss Student's Issue 2 is denied.

2. Irvine's motion to dismiss Student's Issue 9 is granted.

3. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: May 15, 2017

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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings