BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020030673

ORDER GRANTING MOTION TO DISMISS ISSUE FOR LACK OF JURISDICTION

MAY 12, 2020

On March 17, 2020, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Bellflower Unified School District. The Office of Administrative Hearings is referred to as OAH.

On April 29, 2020, Bellflower filed a Motion to Dismiss alleging OAH lacks jurisdiction to adjudicate what Student denominated "Issue No. Ten" in the complaint. 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, as "Issue No. Ten," "Whether the actions of [Bellflower], in ignoring the clear orders of OAH and in delaying and refusing assessment of [Student] for her annual and triennial IEP, denied [Student] and her parents their rights under

Section 504, the Americans with Disabilities Act, and State civil rights laws." In a later paragraph, Student specifically asserts she has "rights under Section 504, the Americans with Disabilities Act, and the Unruh Act. "

Bellflower asserts OAH lacks jurisdiction over these claims. The complaint states these claims are made to satisfy an exhaustion requirement under federal law. OAH does not have jurisdiction to resolve these claims. Accordingly, what Student denominated as "Issue No. Ten" is dismissed.

ORDER

Bellflower's Motion to Dismiss is granted as to "Issue No. Ten." The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DocuSigned by:
Kara Hatfield
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Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings