BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013060620 ORDER GRANTING PARTIAL MOTION TO DISMISS

On June 21, 2013, the Newport-Mesa Unified School District (District) filed a partial motion to dismiss with the Office of Administrative Hearings (OAH). No opposition was received from Student.

APPLICABLE LAW

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" (FAPE), 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 (29 U.S.C. § 701 et seq.) (Section 504) section 1983 of title 42 United States Code, No Child Left Behind (NCLB), the Americans with Disabilities Act (ADA) and state civil rights statutes.

DISCUSSION

The District has moved to dismiss issue four in Student's complaint as it alleges violations that are not within the jurisdiction of OAH. In Student's issue four, Student contends that the District's violations of Student's right to a FAPE resulted in a denial of Student's rights under "Section 504, ADA and State civil rights laws."

Issue four of the Student's complaint alleges violations of Section 504, ADA and state civil rights statutes which are not within the jurisdiction of OAH. Therefore, issue four is dismissed.

ORDER

District's partial motion to dismiss is granted as to issue four. The matter will proceed as scheduled as to all other issues in Student's complaint.

IT IS SO ORDERED.

Dated: July 02, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings