BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. NEWPORT- MESA UNIFIED SCHOOL DISTRICT,	OAH Case No. 2015050430 (Primary)
NEWPORT-MESA UNIFIED SCHOOL DISTRICT v. PARENT ON BEHALF OF DANIEL RIOS, STUDENT.	OAH Case No. 2016010309 (Secondary) ORDER GRANTING DISTRICT'S MOTION TO DISMISS ISSUES 9 AND 10 OF SECOND AMENDED COMPLAINT

On August 31, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process (complaint) naming Newport-Mesa Unified School District. The complaint contained five issues.

On August 20, 2015, Student filed a motion with OAH to file a First Amended Complaint (FAC). The FAC contained ten issues. Issue nine alleged that Newport-Mesa had violated Title 11 of the Americans with Disabilities Act (42 U.S.C. § 1201 et seq.). Issue ten alleged that Newport-Mesa had violated Section 504 of the Rehabilitation Act of 1973 (24 U.S.C. § 701 et seq.). On August 10, 2015, OAH granted Student's motion, and the FAC was filed on that date. On September 10, 2015, Newport-Mesa filed with OAH a motion to dismiss issues nine and ten as being outside the jurisdiction of OAH. Student did not file an opposition to Newport-Mesa's motion. The motion to dismiss was not ruled upon.

On January 11, 2016, Student filed a motion to file a Second Amended Complaint (SAC) and to consolidate the Student filed case with a case filed by Newport-Mesa. OAH granted Student's motion on January 19, 2016. The SAC was filed on January 19, 2016. The SAC contains 12 issues. Issues nine and ten repeat the same issues as contained in the FAC.

On January 21, 2016, Newport-Mesa filed with OAH a motion to dismiss issues nine and ten on grounds that OAH lacks jurisdiction to hear those issues.

OAH received no response to the District's motion.

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 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.) Thus, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 or Section 1983 or the ADA.

ORDER

The District's Motion to Dismiss issues nine and ten is GRANTED. Issues nine and ten are dismissed. The matter will proceed as scheduled.

IT IS SO ORDERED.

DATE: January 27, 2016

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings