BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Matter of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>TUOLUMNE COUNTY SUPERINTENDENT OF SCHOOLS and CURTIS CREEK SCHOOL DISTRICT. | OAH Case No. 2019010105<br><br>ORDER GRANTING MOTION TO DISMISS STUDENT'S ISSUE # 4 |

On January 8, 2019, Tuolumne County Superintendent of Schools and Curtis Creek School District jointly filed a motion to dismiss Issue # 4 in Student's due process complaint and request for mediation. Student did not file a response.

## 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.)

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 1983 of Title 42 United States Code, the Americans with Disability Act (Title 42 U.S.C. §§ 1201, et seq.), and the Unruh Civil Rights Act (Civ. Code, § 51).

## DISCUSSION

Student's Issue # 4 states, Tuolumne County and Curtis Creek "violated [Student]'s rights under section 504 of the Rehabilitation Act, the ADA, and other related civil rights statutes." OAH lacks jurisdiction to adjudicate these claims. Accordingly, Student's Issue # 4 is dismissed. The matter shall proceed as to the remaining issues only.

## ORDER

Tuolumne County and Curtis Creek's motion to dismiss Student's Issue #4 is granted. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: January 15, 2019

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Rebecca Freie
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REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings