BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CAPISTRANO UNIFIED SCHOOL DISTRICT.	OAH Case No. 2015100209 ORDER GRANTING DISTRICT'S MOTION FOR PARTIAL DISMISSAL OF STUDENT'S COMPLAINT

On September 29, 2015, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing, naming Capistrano Unified School District.

On October 12, 2015, District filed a Motion to Dismiss those portions of Student's complaint alleging claims of violation of Section 504, Section 1983, and related state educational laws and statutes.

Student has not filed an opposition to District's Motion to Dismiss.

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.) or Section 1983 of Title 42 United States Code.

DISCUSSION

Student alleges that for the entire statute of limitations period of her complaint, District violated IDEA, Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C., section 1983, related state educational laws and statutes, and denied Student a free appropriate public education. Student further seeks remedies based upon her allegations of non-IDEA claims.

As stated above, 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.) or Section 1983 of Title 42 United States Code. Therefore, District's Motion to Dismiss those portions of Student's complaint which allege or reference claims of violations under Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C., section 1983, and related state educational laws and statutes is dismissed.

ORDER

District's Motion to Dismiss is granted as to those portions of Student's complaint which allege or reference claims of violations under Section 504 of the Rehabilitation Act of 1973, the civil rights act under 42 U.S.C., section 1983, and related state educational laws and statutes.

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

IT IS SO ORDERED.

DATE: October 19, 2015

/s/
JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings