

BEFORE THE
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013090724

ORDER GRANTING MOTION FOR
PARTIAL DISMISSAL OF ISSUES
NOT WITHIN OAH'S JURISDICTION

On September 17, 2013, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Capistrano Unified School District (District) as the respondent.

On September 30, 2013, the District filed a Motion for Partial Dismissal, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and the No Child Left Behind Act.

OAH received no response to the District's motion.

APPLICABLE LAW AND DISCUSSION

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.) Thus, 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.

Here, the complaint alleges six issues under the IDEA and Section 504 of the Rehabilitation Act of 1973, civil rights under 42 U.S.C. section 1983, and the No Child Left Behind statute. As stated above, OAH does not have jurisdiction to hear claims brought under these authorities.

ORDER

The District's Motion to Dismiss all claims made pursuant to Section 504 of the Rehabilitation Act of 1973, Section 1983 of Title 42 of the United States Code and No Child Left Behind statute is GRANTED. All such claims are hereby dismissed. The matter will proceed as scheduled as to Student's claims made pursuant to the IDEA and related state statutes and regulations.

IT IS SO ORDERED.

Dated: October 2, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings