

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DIXON UNIFIED SCHOOL DISTRICT,
DIXON MONTESSORI CHARTER
SCHOOL & FAIRFIELD SUISUN
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013090674

ORDER GRANTING MOTION TO
DISMISS ISSUE NUMBER FIVE

On September 20, 2013, Parent on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Dixon Unified School District (DUSD), Dixon Montessori Charter School, Solano County Special Education Local Plan Area (SELPA) and Fairfield Suisun Unified School District (FSUSD).¹ On October 18, 2013, the DUSD and FSUSD filed a Motion to Dismiss issue number five of Student's complaint, alleging that this issue falls outside of OAH's jurisdiction. OAH received no response to the Motion to Dismiss.

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.)

¹ On October 22, 2013, OAH dismissed the SELPA as a party to this matter.

DISCUSSION

In the present matter, Student alleges five issues in his complaint. In issue number five of the complaint, Student asserts that the DUSD's alleged failure to appropriately respond to Student's request for an independent educational evaluation, and FSUSD's alleged failure to permit access to Student by an independent assessor, violated Student's rights under Section 504 of the Rehabilitation Act of 1973, the American with Disabilities Act (ADA), and unidentified State civil rights laws.

However, 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.), the ADA, or State civil rights laws. Consequently, Student's issue number five is dismissed.

ORDER

The DUSD and FSUSD's Motion to Dismiss issue number five of Student's complaint is granted. The matter will proceed as scheduled with regard to Student's remaining issues.

IT IS SO ORDERED.

Dated: October 24, 2013

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings