

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN BERNARDINO CITY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2013100317

ORDER GRANTING MOTION TO
DISMISS ISSUES TWO, THREE, FOUR
AND FIVE

On October 9, 2013, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the San Bernardino Unified School District (District) as the respondent. Student also alleged claims against three individuals who are employees of the District although failed to list the individuals in the case title.

On October 21, 2013, the District filed a Motion for Dismissal of Issues Two, Three, Four and Five, 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 under state law for negligence.

OAH received no response to the District's motion.

APPLICABLE LAW AND DISCUSSION

Student's complaint contains five issues. Student in the first issue alleges that the District has failed to provide Student with a free appropriate public education (FAPE) in the least restrictive environment (LRE) in school years 2011-2012 and 2012-2013. In Issue Two, Student alleges that the District violated the Americans with Disabilities Act (ADA) (42 U.S.C. § 12131 et seq.) as to the District. In Issue Three, Student contends that the District violated Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.). In Issue Three, Student alleges that the named individuals are in violation of the Federal Civil Rights Act (42 U.S.C. § 1983.). Student alleges that the named individuals acted in a negligent manner in the exercise of their duties under state law in Issue Five.

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, the ADA, Section 1983 of Title 42 United States Code, or for negligence or state law violations not related to the IDEA.

ORDER

The District’s Motion to Dismiss Issues Two, Three, Four and Five is GRANTED. All such claims are hereby dismissed. Since the only claims alleged against the individually named respondents are those issues dismissed, the individuals are also dismissed as parties. The matter will proceed as scheduled as to Issue One.

IT IS SO ORDERED.

Dated: November 8, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings