

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAKE ELSINORE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014040189

ORDER GRANTING MOTION FOR
DISMISSAL OF ISSUE “A”

On March 28, 2014, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the Lake Elsinore Unified School District (District) as the respondent. Issue “A” of the complaint alleges that the District has violated Section 504 of the Rehabilitation Act (29 U.S.C. § 701 et seq.) and the Americans with Disabilities Act (ADA)

On May 2, 2014, the District filed a Motion for Dismissal of Issue “A” of the complaint, alleging that the Office of Administrative Hearings (OAH) is without jurisdiction to hear claims based on Section 504 of the Rehabilitation Act of 1973 and the ADA.

OAH received no response to the District’s motion.

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.) Thus, OAH does not

have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 or the ADA.

ORDER

The District's Motion to Dismiss Issue "A" is GRANTED. Issue "A" is hereby dismissed. The matter will proceed as scheduled on the remaining issues.

IT IS SO ORDERED.

DATE: May 08, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings