

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014050522

ORDER GRANTING MOTION TO
DISMISS SPECIFIED CLAIMS

On May 9, 2014, Parent on behalf of Student (Student) filed a request for due process hearing (complaint), naming the Temecula Valley Unified School District (District).

On May 13, 2014, District filed a motion to dismiss the portions of Student's complaint which allege violations of Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA). On May 19, 2014, Student filed a response to the 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 the Office of Administrative Hearings (OAH) is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

District contends that Student's complaint alleges violations of Section 504 and the ADA, as well as claims under the IDEA. District requests that the Section 504 and the ADA claims be dismissed from Student's complaint.

Student contends that the Section 504 and ADA claims are alleged for exhaustion purposes only.

OAH does not have jurisdiction to entertain claims based on Section 504 or the ADA. Therefore, the Section 504 and ADA claims must be dismissed.

ORDER

The District's Motion to Dismiss is granted to the extent that any of Student's claims under Section 504 or the ADA are hereby dismissed. The matter will proceed on all remaining claims.

IT IS SO ORDERED.

DATE: May 20, 2014

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings