

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FILLMORE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014090860

ORDER GRANTING MOTION TO
DISMISS STUDENT’S ISSUE TWO

Student filed a request for due process hearing (complaint) on September 23, 2014, naming the Fillmore Unified School District. On October 2, 2014, Fillmore Unified filed a motion to dismiss Count Two of Student’s complaint, contending that the Office of Administrative Hearings does not have jurisdiction over the allegations contained in the issue. Count two alleges that Fillmore Unified has discriminated against Student in violation of title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. Student has not filed an opposition or other response to Fillmore Unified’s motion.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” 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.)

As pointed out by Fillmore Unified in its motion to dismiss, OAH does not have jurisdiction to entertain claims based on the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), or title V of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) Therefore, Fillmore Unified’s motion to dismiss Count Two of Student’s complaint is

GRANTED. The hearing in this matter shall proceed as to Count One of Student's complaint, including all its sub-parts.

IT IS SO ORDERED.

DATE: October 15, 2014

/s/

DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings