

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF
EDUCATION AND UNIVERSITY
PREPARATORY ACADEMY.

OAH Case No. 2015050597

ORDER GRANTING PARTIAL
MOTION TO DISMISS

On May 8, 2015, Student filed a Due Process Hearing Request, naming Santa Clara County Office of Education. On July 31, 2015, Student's motion to amend was granted and Student's second amended complaint was deemed filed, adding University Preparatory Academy as a respondent.

On August 10, 2015, Santa Clara filed a motion to dismiss Issue "IV" of Student's second amended complaint on the grounds that the Office of Administrative Hearings does not have jurisdiction over claims arising under Section 504 of the Rehabilitation Act of 1973. OAH received no opposition to Santa Clara's motion to dismiss.

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.) 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.).

Student's second amended complaint alleges 36 issues. Issue "IV" alleges that Santa Clara violated Section 504 of the Rehabilitation Act of 1973. Issues related to a violation of Section 504 of the Rehabilitation Act of 1973 are not within OAH's jurisdiction. Accordingly, Santa Clara's motion to dismiss Student's Issue "IV" for violation of Section 504 of the Rehabilitation Act of 1973 is granted and that claim is dismissed.

ORDER

1. Santa Clara's motion to dismiss is granted as to Student's Issue "IV" for violation of Section 504 of the Rehabilitation Act of 1973.
2. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

DATE: August 20, 2015

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings