

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2015100197

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On September 25, 2015, Parent on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming the Placentia-Yorba Linda Unified School District.

On October 5, 2015, District filed a motion to dismiss Student's issues because each issue alleges, in part, causes of action outside the jurisdiction of OAH. Student has not filed an opposition.

APPLICABLE LAW, DISCUSSION and ORDER

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 therefore does not have jurisdiction to entertain claims based on section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act, or section 1983 of title 42 of the United States Code.

Student alleges three issues in his complaint. Each issue contends that District is in violation of (1) the IDEA; (2) section 504 of the Rehabilitation Act of 1973, and; (3) section 1983 of title 42 of the United States Code, by failing its child find, assessment, and Individualized Education Program duties to Student. OAH does not have jurisdiction to hear claims based on section 504 of the Rehabilitation Act of 1973, or section 1983 of title 42 of the United States Code.

For the foregoing reasons, District's motion to dismiss is granted as to the section 504 of the Rehabilitation Act of 1973, and section 1983 of title 42 of the United States Code claims only. The matter will proceed to hearing as to the remaining claims unless otherwise ordered.

IT IS SO ORDERED.

DATE: November 09, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings