

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
PARENTS ON BEHALF OF STUDENT,

v.

NEWARK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021080439

ORDER GRANTING PARTIAL MOTION TO DISMISS FOR  
LACK OF JURISDICTION

SEPTEMBER 22, 2021

On August 13, 2021, Parents on behalf of Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Newark Unified School District. The Office of Administrative Hearings is referred to as OAH.

On September 16, 2021, Newark Unified School District filed a Partial Motion to Dismiss alleging OAH lacks jurisdiction to adjudicate certain issues alleged in the complaint. OAH received no response from Student.

## APPLICABLE LAW

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 free appropriate public education 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 School. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51).

## DISCUSSION

Student alleges six issues. Issue Six alleges Newark Unified School District violated Student’s rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability

Act (42 U.S.C. §§ 1201, et seq.), and “other related civil rights statutes”. The complaint states that these claims are made to satisfy an exhaustion requirement under federal law.

OAH does not have jurisdiction to resolve these claims. Accordingly, Issue Six is dismissed for lack of jurisdiction.

## ORDER

1. Newark Unified School District’s Partial Motion to Dismiss is granted as to Issue Six.
2. The matter shall proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings