

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

HESPERIA UNIFIED SCHOOL DISTRICT.
OAH CASE NUMBER 2021090391

ORDER GRANTING MOTION TO DISMISS ISSUE FOR
LACK OF JURISDICTION

OCTOBER 29, 2021

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

On October 27, 2021, Hesperia filed a Motion to Dismiss alleging OAH lacks jurisdiction to adjudicate certain issues alleged in the complaint. Due to the type of motion, OAH is ruling on the motion before Student's time to respond has passed.

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 Hesperia violated Section 504 of the Rehabilitation Act of 1973. Hesperia asserts OAH lacks jurisdiction over this claim. Student’s claim regarding violation of Section 504 is dismissed.

ORDER

Hesperia's Motion to Dismiss is granted as to Student's claim that Hesperia violated Section 504. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings