

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021090607

ORDER GRANTING MOTION TO DISMISS ISSUES FOR
LACK OF JURISDICTION

OCTOBER 7, 2021

On September 20, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Long Beach Unified School District. On September 30, 2021, Long Beach filed a Motion to Dismiss alleging OAH lacks jurisdiction to adjudicate certain issues alleged in the complaint. OAH received no response from Student.

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.), called IDEA, 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).

Student’s complaint generally alleges that recently enacted California Assembly Bill 130 violates the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 as it applies to Student as a child with a disability and with an individualized education program, called IEP, under the IDEA.

Student’s Issue 1 asserts that Long Beach failed to offer Student an IEP for independent study or through distance learning and failed to offer or provide an appropriate educational program since the beginning of the 2021-2022 school year. Claims in Issue 1 that allege a violation of the IDEA fall within the jurisdiction of the OAH. District correctly asserts, however, that any claims in Issue 1 that are based upon a

violation of Section 504 or the Americans with Disabilities Act are outside of OAH jurisdiction.

Long Beach asserts OAH lacks jurisdiction over Issues 2 and 3 because both issues are explicitly based upon either the American with Disabilities Act, or Section 504, and neither issue alleges any claim under the IDEA. OAH does not have jurisdiction to resolve Issue 2 or Issue 3 as written.

Accordingly, Long Beach's motion to dismiss as to Issues 2 and 3 of the complaint is granted. Any claims alleged in Issue 1 that are based solely on Section 504 or the Americans with Disabilities Act are also dismissed as outside of OAH jurisdiction. The complaint will proceed to hearing on Issue 1 to the extent those claims arise under the IDEA. All hearing dates are confirmed unless otherwise ordered.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings