

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

BELLFLOWER UNIFIED SCHOOL DISTRICT .
OAH CASE NUMBER 2021080425

ORDER GRANTING MOTION TO DISMISS ISSUES FOR
LACK OF JURISDICTION

NOVEMBER 9, 2021

On August 16, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Bellflower Unified School District. The Office of Administrative Hearings is referred to as OAH.

On November 2, 2021, Bellflower Unified filed a Motion to Dismiss Student's Issue 13, Issue 14, and Issue 15, alleging OAH lacks jurisdiction to adjudicate these issues as 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 issues as follows:

ISSUE 13: Through its actions and omissions, at all times within the applicable statutory period, Bellflower Unified denied Student’s parents’ rights, protections, and

entitlements in retaliation for their efforts to advocate on behalf of their child with a disability in violation of Title 42 United States Code section 12101 *et seq.* and Title 29 United States Code section 794 *et seq.*

ISSUE 14: Through its actions and omissions since December 2, 2015, Bellflower Unified has discriminated against Student based on its designation of her as a student with autism spectrum disorder, and denied her rights, protections, and entitlements in violation of 42 United States Code section 12101 *et seq.* and 29 United States Code section 794 *et seq.*

ISSUE 15: Through its actions and omissions, at all times within the applicable statutory period, Bellflower Unified failed to provide Student a free appropriate public education in violation of 34 Code of Federal Regulations part 104.33.

Student's complain specifies these three issues are raised for the purpose of exhaustion of procedures under Title 20 United States Code section 1415(f)(g) and (l).

District asserts OAH lacks jurisdiction over these claims because the complaint states that these claims are made to satisfy an exhaustion requirement under federal law, and not violations of Individuals with Disabilities Education Act. OAH does not have jurisdiction to resolve these claims.

Accordingly, Student's Issue 13, Issue 14, and Issue 15 are dismissed.

ORDER

1. Bellflower Unified School District's Motion to Dismiss Issue 13, Issue 14, and Issue 15 is granted.

2. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Judith Pasewark

Judith Pasewark

Administrative Law Judge

Office of Administrative Hearings