

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

MODESTO CITY SCHOOLS.
OAH CASE NUMBER 2022010452

ORDER GRANTING MOTION TO DISMISS ISSUE NUMBER 4
FOR LACK OF JURISDICTION

JANUARY 31, 2022

On, January 14, 2022, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Modesto City Schools as respondent. The Office of Administrative Hearings is referred to as OAH.

On January 24, 2022, Modesto filed a Motion to Dismiss alleging OAH lacks jurisdiction to adjudicate Student's Issue number 4 of the complaint, which alleges violations of section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act; and "various civil rights statutes."

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.), or the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.). Student has failed to allege which civil rights statutes govern the rights he seeks to pursue. OAH is unable to exercise jurisdiction over unidentified

state and federal 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 number 4 is dismissed.

ORDER

1. Modesto City Schools' Motion to Dismiss is granted as to Issue number 4.

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

IT IS SO ORDERED.

Penelope S. Pahl

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Administrative Law Judge

Office of Administrative Hearings