

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

STUDENT,

v.

MONTEBELLO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2022010807

ORDER GRANTING MOTION TO DISMISS ISSUES FOR
LACK OF JURISDICTION

FEBRUARY 14, 2022

On January 28, 2022, Student filed a Request for Due Process Hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Montebello Unified School District. On February 7, 2022, Montebello filed a Motion to Dismiss Issues J and K in Student's complaint, on the grounds that the issues are outside of OAH's jurisdiction. Student did not respond to Montebello's motion.

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.).

Issue J of the complaint alleges Montebello denied Student's rights under Section 504 of the Rehabilitation Act and Issue K alleges Montebello denied Student's rights under the Americans with Disabilities Act. OAH does not have jurisdiction to decide these claims. Therefore, Montebello's Motion to Dismiss these issues for lack of

jurisdiction is granted. Accordingly, Issues J and K of Student's complaint are dismissed.
The case will proceed as scheduled with the remaining issues in the complaint.

IT IS SO ORDERED.

Tara Doss

Tara Doss

Administrative Law Judge

Office of Administrative Hearings