BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ANTIOCH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018050541 ORDER GRANTING PARTIAL MOTION TO DISMISS

On May 11, 2018, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Antioch Unified School District.

On June 13, 2018, District filed a partial motion to dismiss. District seeks to dismiss parts of Issues 2 and 3 that allege District violated Student's rights under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), 29 U.S.C. Section 794(u), and Section 1983 (42 U.S. Section 1983).

OAH received no response to the Motion to Dismiss 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) [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 FAPE to 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 Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029).

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code (Section 1983), and 29 U.S.C. Section 794(u).

DISCUSSION

Student's Issue 2 alleges that District failed to timely complete a comprehensive 504 plan for Student and failed to implement the 504 plan proposed in November 2017 and for the school year 2017-2018. Student's Issue 3 alleges that District unlawfully discriminated against Student on the basis of his disabilities by failing to adequately assess him and provide FAPE, by failing to identify, acknowledge and accommodate his disabilities, by failing to provide him the benefits of education available to non-disabled students, and by failing to provide procedural rights, in violation of 29 U.S.C. Section 794(a) and 42 U.S.C. Section 1983.

OAH does not have jurisdiction to hear claims brought Section 504, Section 1983, and 29 U.S.C. Section 794(u). Accordingly, to the extent Issues 2 and 3 in Student's complaint allege claims based upon Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code (Section 1983), and 29 U.S.C. Section 794(u), those claims are dismissed.

ORDER

1. District's partial motion to dismiss parts of Issues 2 and 3 of Student's complaint arising under Section 504, Section 1983, and 29 U.S.C. Section 794(u) is granted.

2. The matter will proceed as scheduled as to the remaining portions of Student's complaint.

IT IS SO ORDERED.

DATE: June 20, 2018

DocuSigned by:
Jackie C. Dai
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JACKIE C. DAI
Administrative Law Judge
Office of Administrative Hearings