BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. SPENCER VALLEY ELEMENTARY SCHOOL DISTRICT.	OAH Case No. 2014120575 ORDER GRANTING DISTRICT'S MOTION TO DISMISS ISSUE FIVE

BACKGROUND INFORMATION

Student filed his request for due process hearing on December 5, 2014, naming the Spencer Valley Elementary School District. Issue Five of Student's request alleges that by the actions stated against Spencer Valley in Issues One through Four, Spencer Valley has denied Student and his parents their rights under section 504 (of the Rehabilitation Act of 1973), the Americans with Disabilities Act, and the state Unruh Act. Student acknowledged in his due process request that the Office of Administrative Hearings would not likely exercise jurisdiction over these issues. Student raised them nonetheless in order to exhaust his administrative remedies.

On January 5, 2015, Spencer Valley filed a motion to dismiss all allegations of Student's Issue Five as beyond the jurisdiction of OAH. Student has not filed an opposition or other response to Spencer Valley's motion.

ANALYSIS AND DISCUSSION

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 FAPE 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 Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Student's request for due process hearing makes a claim for relief for denial of a free appropriate public education under the IDEA, as well as any and all relief available for Spencer Valley's alleged violation of the Americans With Disabilities Act (of 1990), Title V of the Rehabilitation Act of 1973 [29 U.S.C. §§ et seq.] (Section 504), and the Unruh Act.

As discussed above, OAH has no jurisdiction to entertain any of the federal or state constitutional or civil rights claims alleged by Student in Issue Five. Accordingly, to the extent that Student requests relief under other federal or state laws outside of the IDEA and the California Education Code sections addressing special education issues, those claims are subject to dismissal. Thus, any and all claims in for relief in Student's request for due process for violation of the Americans with Disabilities Act of 1990, Section 504, and the Unruh Act in Issue Five are hereby dismissed, and the matter will proceed as to all other issues in Student's complaint.

IT IS SO ORDERED.

DATE: January 12, 2015

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings