BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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| In the Consolidated Matters of:<br><br>PARENT ON BEHALF OF STUDENT,<br><br>v.<br><br>RIVERSIDE COUNTY OFFICE OF EDUCATION, | OAH CASE NO. 2013080367 |
| RIVERSIDE COUNTY OFFICE OF EDUCATION,<br><br>v.<br><br>PARENT ON BEHALF OF STUDENT. | OAH CASE NO. 2013040771<br><br>ORDER GRANTING DISTRICT'S MOTION TO DISMISS ISSUE TWO OF STUDENT'S COMPLAINT IN CASE NUMBER 2013080367 |

On April 16, 2013, Student filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint) in OAH case number 2013040771 (First Case), naming, inter alia, the Riverside County Office of Education (RCOE).

On August 5, 2013, Student filed a complaint in OAH case number 2013080367 (Second Case), again naming RCOE.

On August 12, 2013, RCOE filed a Motion to Consolidate the First Case with the Second Case. Student has not filed an opposition or otherwise responded to RCOE's motion.

On August 21, 2013, OAH granted RCOE's motion to consolidate the First and Second cases.

On August 15, 2013, RCOE filed with OAH a motion to dismiss the second issue of Student's complaint in OAH case number 2013080367 on grounds that OAH lacks jurisdiction over the issue.

## APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free

appropriate public education" (FAPE), 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.) Thus, OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code.

## DISCUSSION

Student's second issue is as follows: "Whether the actions of RCOE, in failing to timely complete agreed-upon assessments of [Student] and convene an IEP meeting within the time period established by law violated the ADA [Americans with Disabilities Act], Section 504 [of the Rehabilitation Act of 1973], and State civil rights laws." Here, Student is alleging claims outside the jurisdiction of OAH as discussed above.

## ORDER

The District's Motion to Dismiss the second issue of Student's complaint in OAH case number 2013080367 is GRANTED. The matter will proceed as scheduled against the remaining parties.

IT IS SO ORDERED.

Dated: August 23, 2013

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings