BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ALHAMBRA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017010013 ORDER GRANTING DISTRICT'S MOTION TO DISMISS ISSUE NO. 7

On December 15, 2016, Parent on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearings naming Alhambra Unified School District. On January 3, 2017, District filed a motion to strike Issue No. 7 of Student's complaint, which will be treated as a motion to dismiss. On January 3, 2017, Student filed a non-opposition.

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 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.)

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.).

DISCUSSION

Student's complaint alleges at Issue No. 7 that District retaliated against Parent for advocating for her child's special education rights, in violation of Section 504. District moves to strike, or dismiss, Issue No. 7 as outside of OAH jurisdiction.

OAH does not have jurisdiction to adjudicate retaliation claims under Section 504. Accordingly, Issue No. 7 of Student's complaint is dismissed.

ORDER

1. District's motion to dismiss Issue No. 7 of Student's complaint is granted.

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

DATE: January 5, 2017

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Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings