BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2012050785 ORDER GRANTING MOTION TO DISMISS NON-IDEA CLAIMS

On May 17, 2012, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint) naming the Newport-Mesa Unified School District (District) as respondent. On May 9, 2013, Student filed a stipulated motion for leave to file a First Amended Complaint (FAC), which the Office of Administrative Hearings (OAH) granted on the same day. On May 21, 2013, District filed a motion to partially dismiss all claims in the FAC on the grounds that Student sought relief that was outside Office of Administrative Hearings (OAH) jurisdiction. Student did not file a response.

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.)

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.) (Section 504), or Section 1983 of Title 42 United States Code (Section 1983). Here, each of the four issues in the complaint alleges violations of Section 504 and Section 1983 in addition to violations of the IDEA.

Accordingly, District's motion is granted as to those allegations and claims outside of the IDEA. All references to Section 504 and Section 1983 are stricken from the complaint and dismissed. Claims one through three shall proceed to hearing on the alleged violations of the IDEA only. All dates shall remain as scheduled unless otherwise ordered.

IT IS SO ORDERED.

Dated: May 31, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings