BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016020634 ORDER GRANTING MOTION TO PARTIALLY DISMISS ISSUE THREE OF STUDENT'S COMPLAINT

On February 9, 2016, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Newport-Mesa Unified School District. On February 19, 2016, Newport-Mesa filed a motion to dismiss, alleging that Issue Number Three in the complaint raises an issue beyond the jurisdiction of OAH. 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) [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.)

DISCUSSION

Newport-Mesa asserts that Student's Issue Three alleges a violation of Student's rights under the California Constitution. Newport-Mesa contends that Student's

constitutional claim falls outside the scope of the IDEA and therefore is outside of OAH's jurisdiction and should be dismissed.

In Issue Three of Student's complaint, Student contends that Newport-Mesa's "policy of 'fencing' violated Student's rights under the California Constitution, Article IX, Section 1" and denied Student a free appropriate public education.

Because OAH lacks jurisdiction to entertain claims based on the California Constitution, to the extent Issue Three alleges a violation of the California Constitution, it is dismissed.

ORDER

Newport-Mesa's motion to dismiss is granted as to Issue Three's allegation of a violation of the California Constitution. The matter will proceed as scheduled as to the remainder of Issue Three and all other issues in Student's complaint.

IT IS SO ORDERED.

DATE: March 1, 2016

DocuSigned by:
Lisa Lunsford
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LISA LUNSFORD
Administrative Law Judge
Office of Administrative Hearings