

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN MARINO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012051120

ORDER DENYING MOTION TO  
DISMISS

On May 29, 2012, Parents on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming the San Marino Unified School District (District) as the respondent. The complaint consists of twenty pages and alleges a single issue that the District has failed to provide Student a free appropriate education (FAPE) in the individualized education programs (IEP) of April 26, 2011 and October 7, 2011. Student then specifies ten ways that the District failed to provide Student a FAPE. Issue 1(i) alleges that the IEPs at issue failed to provide Student with a FAPE by failing to provide access to similarly situated students.

On June 8, 2012, the District filed a Response to the Complaint which included a Motion to Dismiss Issue 1 (i) alleging that the Office of Administrative Hearings (OAH) lacks jurisdiction to hear that issue.

On June 12, 2012, Student filed an opposition.

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.)

## DISCUSSION

In reading the entirety of the complaint, Student alleges that the current offered placement and services fails to meet his unique needs as a Student who is Deaf and Hard of Hearing (DHH). Student has profound bilateral severe to profound sensorineural hearing loss (Complaint at p. 3:8-9) and wears two outside the ear hearing aides. Student contends that the District's proposed placement and services do not meet his unique needs as a Student requiring Auditory Oral Aural instruction.

In reading subissue (i) in the context of the entire complaint, it is obvious that Student is arguing that the proposed placement is not the least restrictive environment for Student as he requires to be instructed with others who require an Auditory Oral Aural instruction.

Because, Issue 1 (i) involves placement and services, OAH does have jurisdiction to hear the matter.

## ORDER

The District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: June 13, 2012

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