

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2012110640

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS

On November 20, 2012, Student filed a due process hearing request (complaint)<sup>1</sup> against the Manhattan Beach Unified School District (District).

On December 6, 2012, District filed a Motion to Dismiss Student's complaint for lack of jurisdiction, on grounds that the complaint does state any issue arising under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) because: (i) the District has determined that Student is not eligible for special education and related services; (ii) Student has not alleged that Student is entitled to special education and related services; (iii) Student has not contested a District Individualized Education Program (IEP) team's determination that Student is not eligible; (iv) Student has not alleged that the District violated the IDEA or California law; and (v) Student is merely seeking classroom accommodations as a general education student.

The facts alleged in Student's complaint do not support District's arguments above. The complaint alleges that Student suffers from learning disabilities involving deficits in visual processing, visual spatial processing, sensory processing and/or motor processing, and that the District has denied Student's request to be found eligible for special education. The complaint is not divided into separate claims, but alleges that Student requires an IEP with at least three specific accommodations to his educational program to achieve academic success, including: (1) additional time to take exams, with breaks during exams to rest his eyes; (2) a reader and note-taker; and (3) a seat away from the classroom white board, large print books and papers, audio recordings of his textbooks and teacher notes in advance of class.

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 United States Code section 1415(b)(7)(A).

Student did not file an opposition to District's Motion to Dismiss. For reasons discussed below, District's Motion to Dismiss is denied.

#### APPLICABLE LAW

The purpose of the IDEA 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.)

As explained in the prior Order of Sufficiency of Due Process Complaint issued in this matter, the IDEA does not require that students with disabilities cite to specific provisions of federal or state law when drafting their due process hearing requests, or that they use a particular language or vocabulary such as references to a “free appropriate public education” or “access to the general education curriculum.” Here, the complaint alleges in plain English that, notwithstanding the District's finding of ineligibility, Student “is in fact suffering from learning disabilities” in the form of a visual processing deficit and other disabilities, and should be provided with an IEP that includes accommodations to assist Student. These allegations state sufficient facts to raise issues with respect to District's identification of Student as a student with a disability, assessment of Student to determine Student's areas of need, and provision of accommodations necessary for Student to access the curriculum. Therefore, Student's complaint is sufficient to allege violations of the IDEA that are subject to OAH jurisdiction.

To the extent that District's motion seeks a determination that District's ineligibility determination was correct, or that Student has waived objection to that determination, the motion is improper. Although OAH may dismiss a matter when it is evident from the face of the complaint that the alleged issues fall outside of OAH jurisdiction (i.e., civil rights claims, or matters seeking enforcement of a settlement agreement), the IDEA and its state law counterparts do not contain a procedure for dismissing IDEA-related claims on the merits without first affording the petitioning party a chance to develop a record at hearing. Here, Student is entitled to an opportunity to develop a record at hearing prior to any determination of the merits of District's interpretation of the facts relating to Student's eligibility for special education and related services.

ORDER

1. District's Motion to Dismiss is denied.
2. All dates in this matter remain on calendar.

Dated: December 24, 2012

/s/

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ROBERT MARTIN  
Administrative Law Judge  
Office of Administrative Hearings