

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

NEWPORT-MESA UNIFIED SCHOOL  
DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2011080720

ORDER DENYING MOTION TO  
DISMISS

On August 17, 2011, Nancy Finch-Heuerman, attorney-at-law, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint), on behalf of the Newport-Mesa Unified School District (District), against Student.

On August 22, 2011, Parents, on behalf of Student (Student) filed a Motion to Dismiss District's complaint on the ground that District's complaint "failed to state complete verified facts, and failed to provide sufficient reasons that would warrant a cause of action" against Student, among others.

No response to the Motion to Dismiss has been received from District.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

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 . . . 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.)

Finally, although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

### DISCUSSION

Districts' complaint raises the issue of whether District's individualized educational program offer of March 8, 2011 provides Student with a FAPE in the least restrictive environment. The above issue is clearly within the matters identified in the IDEA for which District may file a request for a due process hearing.

Further, Student's Motion to Dismiss has not alleged that District's issue is facially outside of OAH jurisdiction. Instead, Student seeks a dismissal due to certain facts being erroneously pled and with which Student disagrees. Rather than through a Motion to Dismiss, the proper avenue for resolving factual disputes is in a hearing. For the foregoing reasons therefore, Student's Motion to Dismiss District's complaint must be denied.

### ORDER

1. Student's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: August 26, 2011

/s/

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Administrative Law Judge  
Office of Administrative Hearings