BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2013040071
v.	ORDER DENYING STUDENT'S MOTION FOR STAY OF SCHOOL ATTENDANCE REVIEW BOARD (SARB) HEARING
IRVINE UNIFIED SCHOOL DISTRICT.	

On April 5, 2013, Student filed a motion for stay of School Attendance Review Board (SARB) hearing. On April 8, 2013, the Irvine Unified School District (District) 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

Student's due process hearing request (complaint) alleges that she is in eighth grade and eligible for special education under the category of specific learning disability (SLD). In Fall 2012 she was diagnosed with highly contagious mononucleosis, and in Spring 2013 was diagnosed with post viral syndrome (PVS) due to chronic fatigue, which PVS is ongoing. Her complaint states that, beginning November 2012, District provided her with one hour per day of home/hospital instruction during her illness and convalescence, but despite a January 3, 2013 doctor's letter stating that Student was unable to return to school for more than two to three hours per day or as tolerated, District demanded that Student return to school for at least four hours per day. At an IEP team meeting on January 15, 2013, District allegedly

refused to accommodate Student for time missed or to "change the IEP for an acute illness." Instead, beginning January 15, 2013, District initiated SARB proceedings against Student for excessive truancy and absences. Student's complaint seeks an expedited hearing on her right to a manifestation determination hearing prior to being referred to SARB proceedings as a habitual truant, and a non-expedited hearing on whether District denied her a FAPE by not making her eligible for further services as other health impaired (OHI) due to her long-term illness.

Student seeks an order suspending her SARB proceedings until the issue in her expedited due process hearing request is resolved. District opposes, contending that OAH lacks jurisdiction over non-IDEA proceedings, that SARB proceedings concern attendance and are not disciplinary proceedings subject to the expedited procedures of Title 20 United States Code section 1415(k), and that OAH has no authority to issue a stay of intra-District attendance proceedings.

SARB proceedings are governed by their own statutes (Ed. Code, § 48320 et. seq.), and OAH does not have any jurisdiction over SARB matters. Expedited hearing procedures apply to instances of proposed or implemented changes in placement due to a disabled child's violation of a student code of conduct (20 U.S.C. § 1415(k)), and Student has failed to demonstrate that SARB proceedings involve a disciplinary change of placement, or that OAH has the authority to stay concurrent attendance proceedings pending a due process hearing to appeal disciplinary action. Student also failed to submit admissible evidence of the SARB proceedings or her long-term illness, as no sworn declaration was filed in support of the motion for stay, and the attached doctor's notes were not identified nor authenticated. Accordingly, Student's request to stay SARB proceedings is denied.

IT IS SO ORDERED.

Dated: April 09, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings