

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. 2014051179

ORDER DENYING DISTRICT'S
MOTION TO DISMISS/LIMIT
REMEDIES

On June 20, 2014, Newport-Mesa Unified School District (District) filed an amended motion to dismiss or limit Student's proposed remedies. On July 1, 2014, Student filed an opposition.

APPLICABLE LAW

OAH will grant motions to dismiss allegations that are facially outside the jurisdiction of the Office of Administrative Hearings (OAH) (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, and incorrect parties).

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq. (IDEA)) 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); See also Ed. Code, § 56501, subd. (a).) 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.)

Where a person brings an action alleging a violation of the IDEA, the court, or an administrative law judge, is empowered to "grant such relief as [it] determines is appropriate." (See 20 U.S.C. § 1415(i)(2)(C)(iii).) School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496.) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Id.* at p. 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely

would have accrued from special education services the school district should have supplied in the first place.” (*Ibid.*)

DISCUSSION AND ORDER

Student’s complaint alleges that during the 2013-2014 school year, Student was placed with a teacher who inconsistently implemented Student’s behaviors supports, and was subsequently placed with a different teacher without aide support, denying Student a free appropriate public education. Among the remedies sought, Student asks that he not be placed in a classroom with the first teacher.

District asserts that OAH is without jurisdiction to order classroom staffing, particularly in contravention of labor and union contracts. Student responds that the administrative law judge may consider teaching staff when determining whether a placement provides the Student with a free appropriate public education.

If Student prevails at hearing, the administrative law judge will have broad power to craft a remedy. Although the assignment of qualified instructional personnel is an administrative decision within the discretion of school districts (*Letter to Wessels* (OSEP 1990) 16 IDELR 735), if challenged, a school district must be prepared to show that its staff is qualified within the meaning of the IDEA and that the student is receiving a free appropriate public education (*Slama v. Independent Sch. Dist. No. 2580* (D.Minn. 2003) 39 IDELR 3). The determination of whether, which, and to what extent remedies will be awarded, if at all, is fact dependent and best left to the administrative law judge presiding at the hearing. In any event, a determination of remedies is fact dependent and well within OAH jurisdiction. Accordingly, District’s motion to dismiss or limit Student’s proposed remedies is denied.

IT IS SO ORDERED.

DATE: July 09, 2014

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings