BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2018120062
v.	ORDER DENYING STUDENT'S REQUEST FOR IMMEDIATE REMOVAL FROM SCHOOL
NEWPORT-MESA UNIFIED SCHOOL DISTRICT.	

On November 30, 2018, Parents, on Behalf of Student, filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Newport-Mesa Unified School District. On December 20, 2018, Parents, on Behalf of Student, filed an Amended Request for Due Process Hearing (amended complaint) with the Office of Administrative Hearings.

On January 16, 2019, Student filed a request to have OAH order his removal from his current school for safety reasons. On January 17, 2017, Newport-Mesa filed an Opposition to Student's Request. The matter was further addressed on the record during the prehearing conference of January 18, 2019.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) 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); 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 has requested that OAH issue an order removing him from his current school for safety reasons. Student cites to a series of recent injuries related to falling at school and the associated head trauma he has experienced as the basis for the request, along with a concern for future debilitating injury. Newport-Mesa opposes Student's request as outside the jurisdiction or authority of OAH.

Here, Student's motion for an order for Student's immediate removal from school does not present an issue as to the identification, evaluation, or educational placement of Student, nor the provision of a free appropriate public education to Student. OAH does not have the jurisdiction or authority to issue an order immediately removing Student from school. Accordingly, Student's request is denied.

IT IS SO ORDERED.

DATE: January 28, 2019

DocuSigned by:
Ted Mann
E2B8AEC30B604EC...

TED MANN
Administrative Law Judge
Office of Administrative Hearings