BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

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

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 (complaint) with the Office of Administrative Hearings.

On January 16, 2019, Student filed a Request for Legal Services seeking to have OAH appoint counsel on his behalf at public expense or otherwise provide legal services to him. 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.)

Both the Individuals with Disabilities Education Act and the California Education Code set up systems to protect student's rights that anticipate parents representing their children rather than hiring counsel to do so. (20 U.S.C. § 1400 et. seq.; California Education

Code § 56500 et. seq.) Both systems also provide procedural safeguards that anticipate that parents with represent their children without legal assistance. (20 U.S.C. § 1415; California Education Code § 56506)

DISCUSSION

Student has requested that OAH provide him with legal services; i.e. provide representation for Student through the conclusion of the due process hearing in this matter or provide an OAH employee to assist Student with the prosecution of his case. Parents request OAH provide them an attorney for a number of reasons. They do not know much about the law. They cannot afford an attorney. They do not have the time to prepare Student's case compared with the time it would take an attorney to do the same. Parents also contend Student should be entitled to the appointment of an attorney at tax-payer expense because Newport-Mesa is represented by an attorney at tax-payer expense. Newport-Mesa opposes Student's request as outside the jurisdiction or authority of OAH.

Both Federal and State law contemplate that parents will represent their children throughout the child's participation in special education, including an appeal to an administrative law judge as in a due process complaint filed with OAH by parents. As the California agency overseeing the administration of the IDEA in California, and appeals by parents (and districts) regarding special education matters, OAH provides a number of resources designed to assist and facilitate parents' representation of their children through due process.

The OAH website includes a section devoted to the Special Education Division (http://www.dgs.ca.gov/oah/SpecialEducation.aspx). That section includes a variety of information for litigants in due process proceedings, including parents, and specifically includes a detailed, comprehensive guide for parents and others entitled "SE Handbook for Unrepresented Parties". Within that handbook are sections about each phase of the due process proceedings, including "Tips for Parents" designed to assist parents through the due process proceedings, including hearing. OAH also includes a list of low and no cost attorneys and non-profit agencies or organizations that routinely represent families of limited means.

Here, although parents raise concerns about the time, difficulty, and seeming complexity of due process proceedings, along with school districts' ultimate access to taxpayer funds to pay for their representation, no mechanism currently exists under either federal or state law to provide public funding for attorney representation for students or parents, other than the ability of attorneys for parents or students to recover attorneys' fees when successfully prosecuting a due process proceeding against a district or other educational entity. It should be noted that parents routinely represent Students in due process matters on behalf of their children, and without attorney representation. All OAH administrative law judges are trained and skilled in allowing all parties, including parents, to navigate a due process hearing, have their voices heard at hearing, and obtain due process at hearing.

In sum, OAH does not have the jurisdiction or authority to grant Student's request for legal assistance. As such, Student's request is denied.

ORDER

Student's request for legal assistance for the prosecution of his due process case is denied.

IT IS SO ORDERED.

DATE: January 28, 2019

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Ted Mann
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TED MANN
Administrative Law Judge
Office of Administrative Hearings