

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2010100191
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011031543 ORDER DENYING DISTRICT'S FIRST MOTION TO DISMISS (FILED MAY 20, 2011)

On October 5, 2011, Parents, on behalf of Student, filed a due process hearing request naming Santa-Monica Unified School District (District) as respondent. On March 29, 2011, District filed its own request for due process hearing naming Student as the respondent. On April 6, 2011, Student filed an amended due process hearing request. On April 8, 2011, the parties stipulated to consolidate the two cases. On April 11, 2011, OAH granted Student's motion to amend its complaint and granted the parties' joint request to consolidate.

On May 20, 2011, District filed a motion to dismiss Student's claims, arguing that as a matter of law, District owed no duty to Student after Parent did not consent to special education, or alternatively, because Student failed to give the required statutory notice of unilateral placement. Student filed an opposition on May 25, 2011. As discussed below, District's motion is denied.

On May 23, 2011, District filed a motion in limine, seeking an order that would bar Student from presenting evidence of the costs related to Parent's unilateral placement and funding of educational services. District argued, there as they do here, that as a matter of law, Student cannot recover reimbursement because it owed no duty to Student after Parent did not consent to special education, or alternatively, because Student failed to give the required statutory notice of unilateral placement.

On May 27, 2011, District's motion in limine was denied. The Order found that although District casted its argument as jurisdictional, its contentions cannot be resolved without making factual findings.

Here, District makes a similar argument to that in the motion in limine and similar reasoning dictates that it be rejected. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests and relaxed evidence rules, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing and parties must be allowed an opportunity to make a record. Here, the issue of whether District was not required to provide special education services on the grounds that parents did not consent to the IEP and/or give proper notice before unilateral placement involves factual determinations that are properly made following hearing. Accordingly, District's first motion to dismiss is denied.¹

IT IS SO ORDERED.

Dated: May 31, 2011

/s/

JUNE R LEHRMAN

Administrative Law Judge

Office of Administrative Hearings

¹ On May 25, 2011, District filed a second Motion to Dismiss, seeking to dismiss all claims arising from and related to assessments performed by District prior to October 5, 2009 on the ground that such issues are barred by the two year statute of limitations. On May 27, 2011, Student filed an opposition to the motion. On May 27, 2011, OAH denied that Motion. Although the Order misstated the date of Student's opposition, its content is clear. It addressed only District's second Motion to Dismiss, filed May 25, 2011. Thus District's first Motion to Dismiss, filed May 20, 2011, has yet to be ruled on, and is therefore addressed herein.