

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SOUTH PASADENA UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011030964
SOUTH PASADENA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011080112 ORDER DENYING MOTION TO DISMISS

On September 8 2011, District filed a motion to dismiss, and limit the remedy of reimbursement for prospective private placement on the ground that her parents privately placed her at a non-certified out-of-state residential placement consistent with a Juvenile Court order several months after Student filed her Complaint. District contends that the Office of Administrative Hearings has no authority to grant a remedy for private placement in a non-certified private placement. District’s motion was not supported by a declaration under penalty of perjury or any authenticated evidence. Student filed an opposition, also unsupported by a declaration under penalty of perjury, on September 13, 2011, arguing that she was not seeking reimbursement for prospective placement in her complaint.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

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.)

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. This matter is more appropriately determined by the hearing judge based on evidentiary findings.

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: September 16, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings