

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

UPLAND UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011070549

ORDER DENYING MOTION TO
DISMISS

On July 11, 2011, District filed a Request for Due Process Hearing in OAH case number 2011070549, naming Student as the respondent, seeking an order permitting District to assess Student without parental consent.

On July 12, 2011, Student served on District a Motion to Dismiss, which was later filed with OAH on July 18, 2011. On July 14, 2011, District Opposed the Motion. On July 14, 2011, Student replied to the opposition. In these papers, the parties dispute whether parents have indeed withheld their consent for the assessment, and argue their respective legal positions regarding whether parents' time to consider District's proposed assessment plan has yet elapsed. As explained below, the Motion is denied.

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. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied.

ORDER

Student's Motion to Dismiss is denied.

Dated: July 18, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings