

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012101012

ORDER DENYING MOTION TO
DISMISS

On October 24, 2012, Student filed a request for due process hearing and mediation (complaint). District filed a motion to dismiss the complaint on November 19, 2012, on the ground that the allegations of the complaint were moot or not yet ripe. Student filed an opposition on November 26, 2012. District filed a reply brief, and supplemental reply brief, on November 28, 2012. Student filed a supplemental opposition on November 28, 2012.

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) Although OAH has granted 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., OAH will not dismiss claims that have otherwise been properly pleaded.

Here, District does not claim that Student has alleged claims in the complaint that fall outside of OAH jurisdiction, as described above. Instead, District is challenging the factual merits of Student’s case. However, District has cited to no authority that supports granting summary judgment. Student has a right to establish an evidentiary record before the hearing judge before a determination on the merits of this case occurs. Accordingly, District’s motion is denied. All dates previously set are confirmed.

IT IS SO ORDERED.

Dated: November 28, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings