

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

DELANO UNION ELEMENTARY
SCHOOL DISTRICT AND KERN
COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH CASE NO. 2013080259

ORDER DENYING RESPONDENTS'
MOTION TO DISMISS

On August 6, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a request for due process hearing (complaint) naming the Delano Union Elementary School District (District) and the Kern County Office of Education (COE) as respondents.

The complaint contains three issues. Issue one alleges that the respondents failed to conduct a behavior evaluation in a timely manner. Issue two alleges that the respondents have unlawfully refused to observe the behaviors that impact Student's behaviors. Issue three alleges that the respondents have denied Student a free appropriate public education (FAPE) by failing to provide appropriate supports to permit Student to access her education since April 2013. Student cites facts that Student was unable to attend school because of an increase in problem behaviors, Student's parents had requested a behavioral assessment via correspondence dated April 24, 2013, and that the respondents agreed to undertake such an assessment on April 25, 2013.

On August 16, 2013, the respondents jointly filed with OAH a motion to dismiss Student's complaint, which amounts to being a motion for summary judgment (Motion). In its joint motion, the respondents contend that OAH lacks jurisdiction because the complaint does not present current dispute since the time period for respondents to conduct its behavior evaluation has not expired.

On August 19, 2013, Student filed an opposition. Student is alleging that the respondent had a duty to expedite the behavior assessment because Student was denied any educational benefit as she was unable to attend school because of her behaviors and the respondents refused to conduct such an assessment in a timely manner.

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 seeks a ruling on the merits. Respondents' assertions constitute a defense to Student's allegations. Accordingly, the motion is DENIED. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: August 20, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings