

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

FAIRFIELD-SUISUN UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016050221

ORDER DENYING MOTION TO  
DISMISS

On April 30, 2016, Fairfield-Suisun Unified School District filed with the Office of Administrative hearings a Request for Due Process Hearing naming Parent on behalf of Student. The complaint contains two issues. Issue One seeks to permit Fairfield-Suisun to conduct a functional behavioral assessment following Parent's failure to consent to requests dated February 1, 2016 and April 5, 2016. Issue Two seeks an order by OAH to permit the implementation of Student's most recent individualized education program which would change Student's placement to the Functional Academics program from the Deaf-Hard of Hearing program because Parent refused to consent to the IEP of November 19, 2015.

On May 6, 2016, Student filed a Motion to Dismiss District's complaint. Student contends the complaint is designed to intimidate Parent that the November 19, 2015 was not presented timely, and that District and Parent agree that Student does not need behavior services. Student's motion is in actuality a motion for summary judgment. On May 6, 2016, Fairfield-Suisun filed an opposition to Student's motion.

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, which requires findings of fact by the hearing officer.

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

IT IS SO ORDERED.

DATE: May 12, 2016

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**ROBERT HELFAND**  
Administrative Law Judge  
Office of Administrative Hearings