BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. FREMONT UNIFIED SCHOOL DISTRICT,	OAH Case No. 2016050475
FREMONT UNIFIED SCHOOL DISTRICT v. PARENTS ON BEHALF OF STUDENT.	OAH Case No. 2016050479 ORDER DENYING STUDENT'S MOTION TO DISMISS

On May 2, 2016, Parents on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process naming Fremont Unified School District. On May 5, Fremont filed with OAH a Request for Due Process (complaint) naming Student. Fremont's complaint contains a single issue: Whether Fremont's December 16, 2015 Triennial assessments were valid and appropriate such that Student is not entitled to Independent Education Evaluations at public expense? On May 24, 2016, OAH granted a motion to consolidate both cases.

On May 24, 2016, Student filed a motion to dismiss Fremont's complaint which is in reality a motion for motion for summary judgment with the Office of Administrative Hearings as it seeks a ruling on the merits. On May 24, 2016, Fremont filed with OAH an opposition to Student's motion. Also on May 24, 2016, Student filed with OAH a reply to Fremont's opposition.

In the motion to dismiss and the reply, Student contends that there is no factual dispute that Fremont has waived its right to refuse to fund IEE's requested by Student. In Fremont's complaint, Fremont alleges that Student's parents requested that it fund IEE's at the February 3, 2016 Individualized Education Program team meeting. Fremont contends that it replied to the request by letter dated February 15, 2016, stating that it would most likely deny the IEE request. Thereafter, Fremont tried to engage Student's parents in a good faith attempt to resolve the matter. In its opposition, Fremont contends that there exists a factual dispute as to whether, under the facts to be determined at hearing, it failed to deny

Student's IEE request "without unnecessary delay." Thus, there is a factual dispute as to whether Fremont acted unreasonably as to filing its 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. 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. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: June 3, 2016

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Robert Helfand
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ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings