

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

POWAY UNIFIED SCHOOL DISTRICT,  
ET. AL.

OAH CASE NO. 2008080112

ORDER DENYING DEPARTMENT OF  
MENTAL HEALTH'S MOTION TO BE  
DISMISSED

On August 20, 2010, the Department of Mental Health (Department) filed a motion to be dismissed from Student's due process case. No response to that motion has been received from any party.

The basis for the motion filed by the Department is that Student's request for a due process hearing contains no specific allegations regarding any failure by the Department to provide Student with a free appropriate public education (FAPE). The motion to dismiss states, in part that Student "fails to state how [the Department] has a legal duty or what facts give rise to the claim."

Special education law contains a very specific procedure for challenging the sufficiency of a due process request. When a party believes that a due process request does not contain sufficient facts to state a claim against that party, the party may bring a Notice of Insufficiency (NOI) within 15 days after receipt of a due process hearing request. (Ed. Code, § 56502, subd. (d)(1).) If the party receiving the notice fails to file an NOI within 15 days of receiving the due process hearing request notice, the due process hearing request is deemed to be sufficient. (Ed. Code, § 56502, subd. (d)(1).)

It is well past the 15 day time limit for filing an NOI, so the Department could not timely file such a notice at this point. Student's due process hearing request is deemed sufficient pursuant to Education Code section 56502, subdivision (d)(1).

Although the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH's jurisdiction (e.g., civil rights claims, Section 504 claims, 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's jurisdiction, but instead seeks a ruling on the merits (that the Department was not responsible for any alleged denial of FAPE as a matter of law).

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.<sup>1</sup>

IT IS SO ORDERED.

Dated: August 26, 2010

/s/

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SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> To the extent that Student's due process request includes claims regarding violations of Section 504 of the Rehabilitation Act, civil rights claims, or other laws which are beyond the jurisdiction of OAH to adjudicate, those specific allegations can be addressed and dismissed during the telephonic prehearing conference currently set for September 8, 2010.