

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ORANGE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2009060381

ORDER DENYING MOTION TO
DISMISS

On June 8, 2009, Student filed a due process hearing request. On June 23, 2009, District filed a combined Notice of Insufficiency (NOI) and Motion to Dismiss. The NOI was denied on June 24, 2009. District's Motion to Dismiss contends that any issue arising between June 7, 2007 (the start of the two year statute of limitations) and July 30, 2008 (the date the parties entered a settlement agreement) must be dismissed. The Motion to Dismiss was not supported by any admissible evidence, particularly the alleged settlement agreement. Student did not file an opposition. For the reasons set forth below, the Motion to Dismiss is denied.

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. The District fails to point to any authority that would require OAH to hear and determine the equivalent of a judgment on the pleadings and/or motion for summary adjudication prior to giving a petitioner the opportunity to develop a factual record at hearing. This is particularly true where the District's motion was not supported by any admissible evidence and Student's due process hearing request is sufficiently pleaded.

The contentions of District's Motion to Dismiss are matters of proof for hearing. Accordingly, the Motion to Dismiss is denied.

IT IS SO ORDERED.

Dated: June 29, 2009

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings