

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009070989

ORDER DENYING STUDENT'S
MOTION FOR SUMMARY
JUDGMENT

On July 30, 2009, Student filed with the Office of Administrative Hearings (OAH) a motion for summary judgment against the Baldwin Park Unified School District (District). On July 31, 2009, the District filed its opposition. On August 3, 2009, Student filed a reply.

APPLICABLE LAW AND DISCUSSION

Student asserts, in his motion for summary judgment, that no triable issue exists regarding the District's obligation to convene an expanded individualized education program (IEP) team meeting, pursuant to California Code of Regulations, title 2, section 60100, subdivision (a), to discuss whether Student should be placed in a residential treatment center. However, Student's motion and reply argument do not cite any legal authority that the civil law procedures for summary judgment are applicable to administrative special education due process hearings. Although OAH has granted motions to dismiss allegations that are facially outside of OAH jurisdiction (for example, civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties), OAH will not dismiss claims or enter summary judgment in favor of or against a student on claims that have otherwise been properly pleaded. Student 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 the District the opportunity to develop a factual record at hearing. Accordingly, Student's motion is denied.

Even if civil summary judgment procedures were applicable, Code of Regulations, title 2, section 60100, subdivision (a), only applies to students eligible for special education services under the criteria of emotional disturbance. According to Student's complaint, while he is presently eligible for special education services, the District has not found Student eligible under the criteria of emotional disturbance. Because Student's eligibility for special education services under the criteria of emotional disturbance is at issue in this case, a triable issue of fact exists as to whether the District needed to convene the requested

IEP meeting. Therefore, Student's motion for summary judgment is denied on this basis as well.

ORDER

Student's motion for summary judgment is denied.

Dated: August 5, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings