

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009100790

ORDER DENYING MOTION TO
DISMISS

On October 8, 2009, Student's parent filed a request for due process hearing on behalf of Student (Student), naming Alhambra Unified School District (District) as the respondent.

On November 10, 2009, the District filed a Motion to Dismiss that due process request. Student has not filed a response to that motion.

The matter is currently scheduled for a prehearing conference on November 30, 2009, and a due process hearing on December 3, 2009.

DISCUSSION

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child...." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).)

Student's due process request involves a dispute over whether the District is required to provide transportation services to Student. Transportation is a related service which may be required as part of a FAPE for a child. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34(a) (2006).)

In its motion to dismiss, the District contends that the dispute over transportation was resolved by an amendment to Student's individualized education program after the date of filing of Student's due process request. The District attaches a declaration and exhibits to its

motion. On that basis, the District argues that there is no longer a dispute between the parties.¹

The Office of Administrative Hearings (OAH) will entertain motions to dismiss when jurisdictional issues arise, such as a case which is outside the statute of limitations or beyond the subject matter jurisdiction of this tribunal. However, the District's motion does not present that type of issue. Instead, the District simply presents evidence that would be appropriate for a hearing. In effect, the District is bringing a motion for summary judgment and asking that this matter be decided on written declarations. That type of motion is not permitted in a special education case, absent a stipulation of the parties.

If there is no longer a dispute between the parties, the parent can easily dismiss this case simply by filing a letter with OAH withdrawing Student's due process request. If not, the matter is set for a prehearing conference and hearing within the next two weeks. Either way, there will be a swift resolution of any remaining dispute.

ORDER

The motion to dismiss is denied. All dates remain on calendar as previously set.

It is so ordered.

Dated: November 24, 2009

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

¹ The District's motion also discusses assessments. Apparently this issue was raised by the District in an abundance of caution because some of the attachments to Student's due process request mention an independent educational evaluation. However, the plain language of Student's due process request only involves a dispute over transportation services, so there is no need to address an assessment issue in this Order.