

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

BAKERSFIELD CITY SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2010110795

ORDER DENYING STUDENT'S  
MOTION TO DISMISS

On February 12, 2011, District filed an amended due process hearing request (amended complaint) that alleged various issues about whether the District's assessments and offers of a FAPE have been appropriate since Student's enrollment in the District in the fall of 2010. On February 28, 2011, Student filed a motion to dismiss the amended complaint on the ground that Student disenrolled from her school of attendance as of January 27, 2011, such that the amended complaint was moot. On March 2, 2011, District filed an opposition on the ground that there was no evidence that Student was enrolled in another school, as required by the state's compulsory education law, such that District still had a duty to offer a FAPE. As discussed below, the motion to dismiss must be denied.

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. To decide Student's motion to dismiss would require the type of evidence-taking and credibility determinations that will occur at hearing. Because the matter cannot be decided without first taking evidence, a ruling cannot be made solely on the parties' allegations. This is particularly true when, unless parents remove Student from special education entirely, District may still have an obligation to provide a FAPE. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: March 08, 2011

/s/

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RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings