

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNIFIED SCHOOL DISTRICT  
AND ALAMEDA COUNTY  
BEHAVIORAL HEALTH CARE  
SERVICES.

OAH CASE NO. 2010120595

ORDER DENYING MOTION TO  
DISMISS

On December 16, 2010, Student's parents on behalf of Student (Student) filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH), naming Fremont Unified School District (District). On December 21, 2010, the District filed a request to add Alameda County Behavioral Health Care Services (ACBH) as a respondent. OAH granted that request on December 29, 2010. On January 6, 2011, Student filed a request to amend the complaint to add specific allegations against ACBH. The motion was granted on January 13, 2011.

On January 31, 2011, ACBH filed a motion to dismiss. Both Student and the District have opposed the motion.

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. Student's complaint alleges, in part, that the respondents denied Student a free appropriate public education because they failed to offer her an appropriate placement to meet her educational needs. ACBH argues that the placement sought by Student was at a for-profit, out-of-state facility, and that ACBH cannot place a child in such a facility as a matter of California law. In other words, ACBH seeks a summary judgment on the basis that there are no triable issues of fact and that ACBH should win as a matter of law.

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: February 8, 2011

/s/

---

SUSAN RUFF  
Administrative Law Judge  
Office of Administrative Hearings