

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

CHULA VISTA ELEMENTARY SCHOOL
DISTRICT,

OAH CASE NO. 2011031306
(Primary)

CHULA VISTA ELEMENTARY SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NOS. 2011070257 and
2011080712

ORDER DENYING MOTION TO
DISMISS

On August 16, 2011, Student filed a motion to dismiss District's complaint in OAH Case No. 2011070257, which was consolidated by OAH on August 22, 2011 with District's OAH Case No. 2011080712 and Student's OAH Case No. 2011031306. District's complaint in Case No. 2011070257 seeks an order permitting it to assess Student pursuant to an April 2011 assessment plan. Student contends in its motion to dismiss that OAH has no jurisdiction to order Student's parents to consent to District's proposed assessment plan and therefore the matter should be dismissed. District filed an opposition on August 17, 2011, on the grounds that the motion is premature and the issue of whether District has a right to assess Student should be heard on its merits.

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. OAH will not dismiss claims that have otherwise been properly pleaded. In light of the liberal notice pleading standards applicable to IDEA due process hearing requests, as a general matter, sufficiently pleaded due process hearing requests should proceed to hearing. Student fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary judgment prior to giving a petitioner the opportunity to develop a factual record at hearing.

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Evidentiary findings are necessary to make such a determination. Accordingly, the motion is denied. The matter shall proceed as scheduled in the consolidated matters.

IT IS SO ORDERED.

Dated: August 23, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings