

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011050598

ORDER DENYING MOTION TO
DISMISS

On June 3, 2011, the Monterey Peninsula Unified School District (District) filed a motion to dismiss Issue One from Student's amended due process hearing request (amended complaint). On June 6, 2011, Student's parent on behalf of Student (Student) filed an opposition to the motion.¹

Issue One of the amended complaint alleges that Student's parent made a written request for an independent educational evaluation (IEE) on March 6, 2011, and that the District failed to timely and appropriately respond to that request, resulting in a procedural violation of special education law. Student contends that the District's actions caused a delay in obtaining a necessary assessment for Student, thereby denying Student a free appropriate public education.

The District argues that the District's assessment and IEP team meeting to review that assessment occurred more than two years before the March 6, 2011 request for an IEE was made and more than two years before Student filed the initial due process complaint on May 16, 2011. The District admits that the law does not specifically state whether there is a time limit on a parental request for an IEE, but argues that the two-year statute of limitations should apply. Therefore, the District contends that Issue One of Student's amended complaint is barred by the two-year statute of limitations.

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. What the District seeks here is a summary judgment or summary

¹ Student's opposition was entitled: "Request to Dismiss District's Declaration in Support of and District's Motion to Dismiss." However, the document was, in fact, an opposition to the District's motion to dismiss, not a separate motion. It will be treated as an opposition herein. To the extent that Student intended it to be a separate motion, that motion is denied.

adjudication of issues. The District is, in effect, arguing that the facts are undisputed and the District should win as a matter of law.

Special education law contemplates a rapid *hearing* on a parent's due process claim, not a pre-trial motion practice that may be confusing or difficult for a child's parents. While some of the District's contentions may provide defenses for hearing, a motion to dismiss is not the appropriate place to decide those issues.

ORDER

The District's Motion to Dismiss is hereby denied. The matter shall proceed as scheduled.

Dated: June 9, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings