

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011090129

ORDER DENYING MOTION TO
DISMISS

On September 6, 2011, Parents on behalf of Student (Student), filed a due process hearing request (complaint) with the Office of Administrative Hearings (OAH). The complaint names Torrance Unified School District (Torrance) and the Southwest Special Educational Local Plan Area (SELPA) as respondents. In the complaint, Student alleges that Torrance and SELPA together are defined as “District.” The complaint goes on to make numerous factual allegations about how “District” deprived Student of a FAPE. On September 29, 2011, SELPA filed a motion to dismiss on the grounds that there are no factual allegations against SELPA in the complaint, SELPA did not provide educational services to Student and SELPA has no obligation to provide Student with a free appropriate public education (FAPE). On October 4, 2011, Torrance filed a notice of non-opposition to SELPA’s motion. Student did not file an opposition to the motion.

APPLICABLE LAW

Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029. 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.....), however, special education law does not provide for a summary judgment procedure.

DISCUSSION

Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. On the face of the complaint, Student has defined “District” as being both SELPA and Torrance. Therefore, Student has made allegations pertinent to SELPA. SELPA's assertions that it did not provide educational

services to Student and has no obligation to provide a FAPE to Student are factual questions which cannot be resolved in a motion to dismiss. Accordingly, dismissal is not appropriate.

ORDER

1. The motion to dismiss the Southwest SELPA is denied.
2. All previously scheduled dates shall remain on calendar.

Dated: October 10, 2011

GLYNDA B. GOMEZ
Administrative Law Judge
Office of Administrative Hearings