

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011090313
SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011080304 ORDER DENYING MOTION TO DISMISS

On October 21, 2011, District filed a motion to dismiss, or in the alternative, limit Student's claims for relief, beginning August 19, 2010 when the parents allegedly withdrew consent for special education services, up to and including the date when OAH renders a final Decision on the merits of the case. On October 26, 2011, Student filed an opposition.

Student was initially eligible for special education services in May 2005, under the category of speech and language impairment. Parents withdrew consent for special education services on August 19, 2010. In February 2011, parents requested a new assessment for eligibility. District conducted a psycho-educational assessment, found Student eligible, and convened an initial IEP on May 16, 2011. Parents did not consent to that IEP. Parents requested an IEE at public expense, and the District denied the request. On August 9, 2011, District filed a request for due process hearing. On September 8, 2011, Student filed a request for due process hearing alleging procedural and substantive issues for two years past.

District cites title 34 Code of Federal Regulations, part 300.300(b)(2), and Education Code section 56346, subdivisions (b), (c)(1), and (c)(2), to support its contention that it has no liability from the time that parents withdrew consent for the provision of special education up through and including the time when OAH conducts a due process hearing and issues a final decision. While it appears that District may have meritorious defenses for that time period, there are triable issues of fact which require an evidentiary hearing: the facts surrounding the initial withdrawal of consent for special education in August 2010, and the

facts surrounding whether the District made reasonable efforts to obtain informed consent at the initial IEP of May 2011.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

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, or incorrect parties), 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 after factual findings. Accordingly, the motion is denied. District may raise the same issues as a defense at hearing.

ORDER

1. District’s motion to dismiss is denied.
2. At hearing, the parties shall be prepared to address and argue the effect, if any, of Education Code section 56346, subdivisions (b), (c)(1), and (c)(2), on District’s responsibility to provide a FAPE to Student.
3. All dates currently set in this matter are confirmed.

Dated: November 04, 2011

/s/

DEBORAH MYERS-CREGAR
Administrative Law Judge
Office of Administrative Hearings