

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

DRY CREEK JOINT ELEMENTARY
SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011090491

ORDER DENYING MOTION TO
DISMISS

On December 6, 2011, the Dry Creek Joint Elementary School District (District) filed with the Office of Administrative Hearings (OAH) District's First Amended Request for Due Process (complaint) naming Student as the respondent.

On January 25, 2012, Student filed a motion to dismiss Issues 2 and 4 of District's complaint. Student argues that District is not entitled to assess Student without his parents consent, as requested at Issues 2 and 4, based upon additional facts asserted in Student's motion, including for example, that his parents consented to some assessments, but not others, by email, that District's assessment requests were untimely, that assessment issues arose from certain statements made by the school psychologist, that the parents had "no choice" but to seek independent testing, and that District is acting in bad faith to circumvent Student's right to independent educational evaluations. On January 30, 2012, District filed an opposition to Student's motion, and on January 31, 2012, Student filed a reply to District's opposition.

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, although Student originally characterized his motion as one for "dismissal" of specific issues from facts alleged on the face of the complaint, and re-characterized his motion as one for "judgment on the pleadings" in reply, his motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. The proper place for Student to demonstrate that District's claims fail on the merits is at hearing. Accordingly, the motion is denied.

ORDER

1. Student's motion to dismiss is denied.
2. All currently scheduled dates remain on calendar, and the matter shall proceed as scheduled.

Dated: February 02, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings