

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

TORRANCE UNIFIED SCHOOL  
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2012100114

ORDER DENYING MOTION TO  
DISMISS

On October 1, 2012, Torrance Unified School District (District) filed a request for due process and mediation (complaint) for an order permitting District to complete its triennial assessment of Student without parental consent, or alternatively, for an order declaring that Parent had forsaken the right to District provision of special education to Student by refusing to consent to his assessment. On October 4, 2012, Step-father filed a motion to dismiss (motion) this matter. On October 9, 2012, District filed an opposition and on October 10, 2012, Step-father filed a reply.<sup>1</sup>

APPLICABLE LAW AND DISCUSSION

Although the Office of Administrative Hearings (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, as discussed below, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits.

Step-father asserts that he has refused consent to District's request for assessment on the grounds that it might compromise a pending civil tort suit against District. Step-father further asserts that the school psychologist gained consent to conduct Student's psychoeducational assessment through fraud and misrepresentation. District contends it has the right to conduct a triennial assessment of Student and Parent's failure to make Student available warrants the relief it seeks.

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<sup>1</sup> In its opposition District contends that Mother holds Student's educational rights and Step-father lacks standing to bring a motion to dismiss. Because Student's motion is denied on other grounds, the issue of whether Step-father has standing to appear in this matter is not necessary to the determination of the motion.

Step-father seeks a ruling on the merits of Student's position that Parent has reasonably withheld consent and Student need not be made available for assessment. Such a ruling, without an evidentiary hearing, would amount to a summary judgment. Summary judgment is not available in a special education due process matter. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

1. Student's motion to dismiss is denied.
2. All dates currently set in this matter are confirmed.

Dated: October 15, 2012

/s/

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JOAN HERRINGTON  
Administrative Law Judge  
Office of Administrative Hearings