

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ALHAMBRA UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012110012

ORDER DENYING DISTRICT'S  
MOTION TO DISMISS

On December 4, 2012, the Alhambra Unified School District (District) filed a motion to dismiss Student's due process hearing request (complaint) in its entirety. On December 7, 2012, Student filed opposition. District's reply was received on December 10, 2012.

Student's due process hearing request (complaint) alleges two claims, that she was denied a free appropriate public education (FAPE) because District: (1) failed to respond to a request for assessment mailed October 29, 2010 and received by District on November 9, 2010, and (2) refused to assess Student upon her parent's request in June 2012. District moves for dismissal on the grounds that Issue One occurred beyond the two-year statute of limitations, and that Issue Two improperly names District because another school district was responsible to provide Student with a FAPE in June 2012 pursuant to an inter-district transfer. As part of its 49-page motion, District submits three declarations and eleven exhibits to establish the circumstances surrounding the assessment requests.

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, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits based upon a pre-hearing factual inquiry into documentary evidence. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: December 11, 2012

/s/

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ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings

