

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

OAKLAND UNIFIED SCHOOL DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013030300

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2013020044

ORDER DENYING MOTION TO
DISMISS

On March 20, 2013, Student filed a motion to dismiss Oakland Unified School District's (District's) amended request for Due Process hearing (Motion). On March 22, 2013, the District filed an opposition.

APPLICABLE LAW AND DISCUSSION

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the Individuals with Disabilities Education Act (IDEA) or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

In the District's amended complaint, District contends that Student is not a resident of the District. Student alleges that the amended complaint should be dismissed because Student contends that he is a resident of the District. This is a factual issue which will need to be determined in an evidentiary hearing on the merits.

Although the Office of Administrative Hearings (OAH) will grant motions to dismiss allegations that are facially outside of OAH's 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. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: March 26, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings