

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ADELANTO SCHOOL DISTRICT & SAN
BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS

OAH CASE NO. 2013060519

ORDER DENYING SBCSS' MOTION
TO DISMISS WITHOUT PREJUDICE

On June 12, 2013, Student, through his attorney and advocate, filed a request for due process hearing (complaint) naming Adelanto School District (District) and San Bernardino County Superintendent of School (sic) (SBCSS). On July 17, 2013, SBCSS filed a motion to dismiss SBCSS from the complaint. Its motion was supported by a declaration under penalty of perjury and authenticated evidence. Student filed an opposition on July 22, 2013, which was not supported by a declaration under penalty of perjury, but included unauthenticated evidence. Student also requested an evidentiary hearing on the issue if OAH was included to grant the motion. SBCSS filed a reply on July 22, 2013, which included another declaration under penalty of perjury. Student filed a reply on July 23, 2013.

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. Specifically, the parties have raised a factual issue as to whether SBCSS is an appropriate party to this action based upon its alleged participation at the individualized education program (IEP) team meeting which is the subject of the complaint. Specifically, SBCSS submitted evidence to support its position that it did make decisions about Student's educational program, whereas Student submitted documents indicating SBCSS performed assessments and was listed as Student's district of attendance on an IEP. The parties cite as authority OAH rulings that are based upon evidentiary findings. In this case, this issue requires evidentiary findings by the hearing judge and is therefore not appropriate for dismissal at this stage of the case.

Accordingly, Student's request for an evidentiary hearing, and SBCSS's motion, are denied without prejudice to SBCSS's right to renew the motion before the hearing ALJ. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: July 23, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings