

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SALINAS CITY ELEMENTARY SCHOOL
DISTRICT, MONTEREY COUNTY
OFFICE OF EDUCATION AND SANTA
RITA UNION HIGH SCHOOL DISTRICT.

OAH CASE NO. 2013071259

ORDER DENYING SALINAS CITY
ELEMENTARY SCHOOL DISTRICT'S
MOTION TO DISMISS ISSUE TWO

On July 26, 2013, Parents on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request (complaint), naming the Salinas City Elementary School District (City) and the Monterey County Office of Education as respondents.

On September 9, 2013, Student filed a Motion to Amend the Due Process Hearing Request (amended complaint) seeking to add an additional party, the Santa Rita Union High School District. On September 11, 2013, OAH issued an order granting leave to file the amended complaint.

On September 4, 2013, City filed a motion to dismiss Issue Two on grounds that Student was not a resident within City's geographical boundaries during all times material. Issue Two of the amended complaint is identical to Issue Two of the complaint. Although City's motion is directed to the complaint, it will be deemed to be a motion to dismiss Issue Two of the amended complaint.

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 City's defense to Issue Two. City seeks OAH to consider factual information which goes beyond the complaint. In reality, City is seeking a summary judgment on the merits. Accordingly, the motion is denied

ORDER

Salinas City Elementary School District's motion to dismiss Issue Two of the amended complaint is denied.

IT IS SO ORDERED.

Dated: September 11, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings