

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

MORGAN HILL UNIFIED SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH Case No. 2016030186

ORDER DENYING STUDENT'S
MOTION TO DISMISS

On March 2, 2016, Morgan Hill Unified School District filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Student. The complaint asks for a determination that an individualized education program offers Student a free appropriate public education.

On March 14, 2016, Student filed a Response and Motion to Dismiss alleging that it is premature to decide the issue of placement for Student because Morgan Hill's evaluations are inconsistent and do not provide sufficient information to determine Student's appropriate placement and that new evaluations have been scheduled.

On March 16, 2016, Morgan Hill filed opposition to the Motion to Dismiss, alleging that Morgan Hill is obligated to file for a hearing when a parent does not consent to an IEP.

The IDEA provides that a parent or a public agency may file a due process complaint on any matter relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. (34 C.F.R. section 300.507 (2006); Ed. Code section 56501(a).

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. The issue in the complaint is regarding the appropriateness of an IEP offered by Morgan Hill. OAH has jurisdiction over this claim. Here, Student's motion seeks to obtain a ruling regarding the appropriateness of the IEP offer at issue in this matter and

therefore seeks a ruling on the merits. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: March 17, 2016

DocuSigned by:

Cheryl Carlson

CHERYL CARLSON

Administrative Law Judge

Office of Administrative Hearings