

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CABRILLO UNIFIED SCHOOL  
DISTRICT; KAPLAN ACADEMY OF  
CALIFORNIA; CALIFORNIA VIRTUAL  
ACADEMY.

OAH CASE NO. 2010090040

ORDER DENYING MOTION TO  
DISMISS

On August 30, 2010, Student filed a request for due process (complaint), naming Cabrillo Unified School District (District), Kaplan Academy of California (Kaplan), and California Virtual Academy (CVA) as respondents. On September 9, 2010, District filed a motion to dismiss claims for the 2009-2010 school year. District specifically alleged that that because Student was enrolled in charter schools (Kaplan and CVS) during the 2009-2010 school year, he became a “resident” of the charter schools, and no longer a resident of the District. On September 20, 2010, Student filed an opposition contending that District’s motion is not proper, as it seeks to address issues of fact. In addition, Student asserted that the question of whether Kaplan or CVA were considered charter schools is a question of fact. Moreover, Student contends that even if Kaplan and CVA were charter schools, enrollment in a charter school did not alter Student’s residence, as he resided with his parents within the boundaries of the District. Student is correct.

DISCUSSION

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. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

///

///

///

IT IS SO ORDERED.

Dated: September 21, 2010

/s/

---

CARLA L. GARRETT  
Administrative Law Judge  
Office of Administrative Hearings