

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS NIETOS SCHOOL DISTRICT,
WHITTIER AREA COOPERATIVE
SPECIAL EDUCATION PROGRAM AND
COVINA VALLEY UNIFIED SCHOOL
DISTRICT

OAH CASE NO. 2010120159

ORDER DENYING MOTION TO
DISMISS

On December 13, 2010 Respondent Covina-Valley Unified School District (Covina-Valley) filed a motion to dismiss (Motion). On December 14, 2010, Respondents Los Nietos School District (Los Nietos) and Whittier Area Cooperative Special Education Program (Whittier Cooperative) filed a brief in support of Covina-Valley's Motion. On December 16, 2010, Petitioner opposed Covina's Motion.

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 based upon proffered evidence set forth in declarations. Petitioner alleged that Covina-Valley attended IEP team meetings and was responsible for providing a FAPE based upon its interagency agreement with Respondents. Respondents maintain that the presence of Covina-Valley at IEP team meetings made it responsible for providing a FAPE, or that inter-agency agreements were in effect that gave rise to Covina-Valley's obligation to provide a FAPE. Petitioner disputes Respondents' proffered evidence. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: December 22, 2010

/s/

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings