

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNION
SCHOOL DISTRICT.

OAH CASE NO. 2011040320

ORDER DENYING MOTION TO
DISMISS

On May 5, 2011, District filed a Motion to Dismiss District from Student's complaint (Motion) on the grounds that it is not a proper party based upon Student's residence. On May 6, 2011, Student filed an opposition.

Parents have the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) Although OAH has granted 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...., OAH will not dismiss claims that have otherwise been properly pleaded.

District fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary judgment prior to giving Student the opportunity to develop a factual record at hearing. District's Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits, which is effectively a motion for summary judgment. Based upon the liberal notice pleading standards applicable to IDEA due process hearing requests, sufficiently pleaded due process hearing requests should generally proceed to hearing. The motion is therefore denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: May 9, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings