

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CULVER CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011060217
CULVER CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011060075 ORDER DENYING STUDENT’S JUNE 10, 2011 MOTION TO DISMISS

On June 1, 2011, Culver City Unified School District (District) filed a Request for Due Process Hearing in OAH case number 2011060075 (District’s case), naming Parent on behalf of Student (Student) as respondent, and seeking an order permitting it to assess Student. On June 3, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011060217 (Student’s case), naming District as respondent. By Order dated June 9, 2011, Student’s case and District’s case were consolidated.

On June 6, 2011, Student filed a “2nd Request for Emergency Stay Put,” which also contained a “Request for Dismissal.” On June 9, 2011, District filed an opposition. OAH issued an order denying Student’s Request for Dismissal on June 13, 2011. On June 10, 2011, Student filed a second Motion to Dismiss (Motion). District filed an opposition on June 16, 2011.

By way of background, District and Student settled a previous matter on April 15, 2011. District’s complaint alleged that the pursuant to the settlement agreement, the parties had agreed to an assessment plan. District’s complaint alleged that Student had not attended scheduled testing sessions. District’s complaint sought an order allowing it to conduct assessments. Student’s complaint, in pertinent part, was entitled “Due Process Complaint: CCUSD Breach (sic) of Contract, Request to Rule: No-OAH Jurisdiction to Enforce Settlement Agreement and Order Sanctions on District and District Counsel.” It alleged that District breached the terms of the settlement agreement providing for reimbursement of certain ongoing expenditures and reimbursement for certain past expenditures. Student’s complaint alleged that Student had sought relief in Superior Court, where, apparently, District had argued that Student had failed to exhaust her administrative remedies

by failing to first file with OAH and/or the California Department of Education. Student's complaint therefore sought a ruling either that OAH is without jurisdiction to enforce the settlement agreement, or that she has exhausted her administrative remedies.

APPLICABLE LAW

Parents or public agencies involved in educational decisions about a pupil 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).) This includes due process complaints initiated by school districts concerning lack of parental consent to assessments. (Ed. Code, § 56501, subd. (a)(3).)

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 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 on the merits of claims stated in the complaint.

DISCUSSION AND ORDER

Student's Motion argues that 1) District's complaint is moot because Parent consented to District's assessment plan, and 2) District's complaint is frivolous and retaliatory. District's opposition similarly offers argument and evidence in support of the merits of its complaint. Student'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 issues will be addressed at hearing after the parties have had an opportunity to present evidence. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: June 16, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings