

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012040450

ORDER DENYING MOTION TO  
DISMISS

On April 12, 2012 Student's parents (Parents) filed a request for mediation and a due process hearing<sup>1</sup> (complaint) naming District as the respondent. On April 24, 2012, District filed a motion to dismiss and concurrently a notice of insufficiency (NOI). The NOI was denied by OAH on April 26, 2011 under a separate Order. District's motion to dismiss is made on the grounds that during the operative times of the complaint District was not the local educational agency responsible for Student's education and that a 2007 settlement agreement defined District's obligations to Student, if any. On April 30, 2012, Parents filed an opposition to District's motion to dismiss.

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, including the merits of District's defenses, which require findings of fact by the hearing judge. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: May 2, 2012

/s/

ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).