BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ANAHEIM ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020090678

ORDER DENYING MOTION TO DISMISS COMPLAINT

SEPTEMBER 30, 2020

On September 29, 2020, Parents on behalf of Student filed with the Office of Administrative Hearings, referred to as OAH, a motion to dismiss Anaheim Elementary School District's Request for Due Process Hearing, called a complaint. On the same day, Student filed an objection to Anaheim Elementary's prehearing conference statement in support of his motion to dismiss. Student did not serve Anaheim Elementary's attorney the motion to dismiss and the objection to Anaheim Elementary's prehearing conference statement. On September 30, 2020, Anaheim Elementary filed an opposition to the motion.

Student contends Anaheim Elementary failed to serve Parents with a copy of the complaint, and therefore, the complaint should be dismissed. However, Anaheim Elementary served Parents a copy of the complaint by United States mail on

September 21, 2020, at the same address Parents listed as their address in Student's motion to dismiss. Therefore, Anaheim Elementary properly served Parents a copy of the complaint.

In addition, due process requires notice and an opportunity to be heard. Any documents filed with OAH requesting an action must be served on the opposing party's attorney if the party is represented by counsel. Here, Anaheim Elementary's complaint specifically requested that its attorney receive all communications regarding this matter. Student failed to properly serve Anaheim Elementary's attorney, and therefore, the motion to dismiss and any motions raised in Student's objection to Anaheim Elementary's prehearing conference statement is denied on those grounds.

Furthermore, although OAH will grant motions to dismiss allegations that are facially outside of OAH's jurisdiction such as civil rights claims, section 504 claims, enforcement of settlement agreements, or incorrect parties, special education law does not provide for a summary judgment procedure. Here, the motion to dismiss is not limited to matters that are facially outside of OAH's jurisdiction. Factual disputes exist as to whether Parents failed to make Student available to Anaheim Elementary for assessments and impeded Anaheim Elementary's ability to assess him. A determination of these factual disputes requires an evidentiary hearing. Accordingly, the motion to dismiss is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

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Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings