BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. DELANO UNION ELEMENTARY SCHOOL DISTRICT AND DELANO UNION SCHOOL DISTRICT,	OAH Case No. 2016100759 (Primary)
DELANO UNION SCHOOL DISTRICT , v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2016100769 ORDER DENYING DELANO UNION'S MOTION TO DISMISS AND REQUEST FOR SANCTIONS

Delano Union School District filed a motion to dismiss Student's complaint on October 31, 2016, concurrently with its opposition to Student's Motion for Stay Put and its Request for Sanctions. District's Motion to Dismiss was supported by a declaration under penalty of perjury from District's special education director. Student filed an opposition to the Motion to Dismiss and a conditional request for a sanctions hearing on November 1, 2016.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (for example, civil rights claims and section 504 claims), special education law does not provide for a summary judgment procedure.

Here, District's Motion to Dismiss addresses the merits of Student's case. Its Motion for Sanctions also addresses the merits of Student's case. District argues it has no duty to offer a free appropriate public education to Student because he does not currently reside within District's boundaries and is not attending a District school. The issue of whether residency within District boundaries affects District's duty to offer a FAPE to Student requires findings of fact by the hearing officer, and therefore Student's claim is not facially outside of OAH jurisdiction. Accordingly, the Motion to Dismiss is denied. District's Motion for Sanctions is also denied, rendering Student's request for a sanctions hearing moot

All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: November 2, 2016

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Adrienne L. Krikorian
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ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings