BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

NEWARK UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023020144

ORDER DENYING MOTION TO DISMISS SUMMARY JUDGEMENT

FEBRUARY 24, 2023

On February 16, 2023, Student filed a motion to dismiss with the Office of Administrative Hearings asserting that a host of factual issues rendered the due process hearing request subject to dismissal. On February 21, 2023, Newark Unified School District filed an opposition, arguing that Student's contentions were exclusively factual and did not present any issue affecting jurisdiction by OAH or pre-empting jurisdiction by OAH. The issue was further argued by both parties during the prehearing conference, called a PHC, held on February 24, 2023.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH 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 jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion to dismiss is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Ted Mann

Ted Mann
Administrative Law Judge
Office of Administrative Hearings