BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. ABC UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013020685 ORDER DENYING DISTRICT'S MOTION TO DISMISS

On April 24, 2013, the District filed an amended motion to dismiss Student's case or to dismiss certain remedies from Student's case. On April 24, 2013, Student filed an opposition to the motion.[1]

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. Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

The District's motion argues that the District no longer has an obligation to Student because Student is no longer at the psychiatric hospital. While that argument might provide a defense at hearing, it does not involve OAH's jurisdiction and is not a proper basis for a motion to dismiss. Likewise, the District's objections to some of Student's requested remedies are not a proper subject for a motion to dismiss – the remedies awarded in an due process case are within the discretion of the administrative law judge.

IT IS SO ORDERED.

Dated: April 26, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings

[1] Student's opposition to the amended motion to dismiss incorporated by reference an earlier opposition that Student claimed to have filed. However, Student's original opposition papers have not been filed with OAH. Although the District's motion must be denied in any event, it is suggested that Student's counsel file the full opposition papers so the administrative record will be complete.