

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VAL VERDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014051222

ORDER DENYING MOTION TO
DISMISS

On June 6, 2014, the Val Verde Unified School District (Val Verde) filed a motion to dismiss Student's entire due process request. Val Verde makes several contentions in support of its motion. It contends that Student is not a resident of the district, and therefore Val Verde does not have an obligation to assess her, as alleged in Student's complaint. Val Verde also contends that the request to assess Student was made by a person who was not authorized to make the request. Finally, Val Verde contends that Student's due process request violates a court order addressing custody of Student and what Student's parents can and cannot do with regard to her education. Val Verde attaches several documents in support of its motion, including a superior court custody order.

Student, through her advocate, filed an opposition to Val Verde's motion to dismiss on June 12, 2014.

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, 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. In its motion, Val Verde wishes an adjudication regarding whether Student is a resident of the district, and whether the custody order regarding Student precludes Student's due process request. However, the issues raised by Val Verde are not amenable to a motion to dismiss. The fact that Val Verde needed to include several documents in support of its motion emphasizes that it is in fact a motion for summary judgment and not a motion to dismiss.

Val Verde's motion also raises several factual issues, many of which are disputed by Student in her opposition. Those factual issues must be decided after a hearing on the merits.

They cannot be decided on a motion. Accordingly, Val Verde's motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: June 12, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings