

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CAMPBELL UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2014090127

ORDER DENYING MOTION TO
DISMISS

On September 22, 2014, the Office of Administrative Hearings granted Student leave to file an amended complaint. Student's complaint alleges in pertinent part that the Campbell Union High School District has denied her a free appropriate public education from December 2, 2013, to the present by failing to provide her with an appropriate placement and services.

On October 2, 2014, Campbell Union filed a motion to dismiss all allegations of Student's complaint concerning events after September 5, 2014. Campbell Union contends that as of that date, Student became a resident of a licensed children's institution located outside its boundaries, where she was placed by a regional center. Therefore, Campbell Union contends that it has not had any responsibility for Student's education since then.

On October 7, 2014, Student filed an opposition to Campbell Union's motion to dismiss. Student contends that the motion to dismiss should be denied because it is, in effect, a motion for reconsideration of an earlier motion to dismiss which OAH denied on September 22, 2014, and that it is an improper motion for summary judgment. Student further contends the motion should be denied because her allegation is precisely that Campbell Union is presently responsible for funding her residential placement.

APPLICABLE LAW, DISCUSSION, AND ORDER

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. As pointed out by Student in her opposition, Campbell Union's motion to dismiss is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits as to who is the responsible local education agency. Student contends that Campbell Union failed to offer her an appropriate placement beginning in

December 2013, and continuing to date. She contends that she was forced to accept a placement offered by the regional center because Campbell Union, as her school district of residence, failed to offer her an appropriate placement. The allegations in Student's complaint therefore have put at issue the time period subsequent to September 5, 2014. Because this contention raises disputed issues of fact, dismissal of any portion of Student's complaint is not appropriate by way of a motion to dismiss.¹

Accordingly, Campbell Union's motion to dismiss is denied. All dates in this case shall remain as presently calendared.

IT IS SO ORDERED.

DATE: October 14, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings

¹ It is unnecessary to address Student's other contentions regarding the propriety of Campbell Union's motion to dismiss.