

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

ORINDA UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021070616

ORDER DENYING MOTION TO DISMISS AND FOR

SANCTIONS

AUGUST 19, 2021

Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, called OAH, on July 19, 2021, naming Orinda Union School District. On August 11, 2021, Orinda filed a Motion to Dismiss including a request for sanctions with OAH. Student filed an opposition to the motion on August 17, 2021. Orinda filed a reply to Student's opposition on August 18, 2021.

Orinda's Motion seeks to dismiss Student's Issue 2((E) of the complaint, which alleges a failure to timely assess pursuant to an April 2021 assessment plan. Orinda argued that the claim is "premature." Orinda seeks sanctions against Student's attorney alleging Student's attorney failed to respond in good faith to Orinda's counsel's request

to dismiss Issue 2(E). Student opposed the motion asserting that Student has the right to amend the complaint to restate the issue in such a manner as to make it timely and therefore the claim should not be dismissed, and that sanctions are not appropriate.

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, specifically whether Issue 2(E) falls within the applicable statute of limitations.

The issue of timeliness of Issue 2(E) requires findings of fact by the hearing officer and is not appropriate for a motion to dismiss at this stage of the case. Additionally, Orinda has not established any facts that justify an order for sanctions against Student's attorney for acting in bad faith, as alleged. Accordingly, the motion to dismiss and for sanctions is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings