

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

DEL MAR UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021120262

ORDER DENYING MOTION TO DISMISS

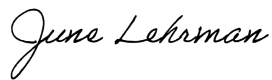
DECEMBER 21, 2021

On December 7, 2021, Student filed a Request for Due Process Hearing, called a complaint, naming Del Mar Union School District. The complaint alleged that as a result of a "stay away letter" and ongoing temporary restraining order proceedings, called a TRO, against Parent, she was not able to transport her son to and from school, and that this constituted a change of placement. On December 21, 2021, Del Mar filed a motion to dismiss with the Office of Administrative Hearings, called OAH. The motion recounted various alleged facts concerning the stay away letter, the TRO and concerning the transportation that was available to Student. The motion also argued that inconsistent rulings might result from the concurrent OAH and superior court TRO proceedings, or conversely that the TRO would be decided first, thereby rendering the

complaint before OAH "moot." The motion also argued that Student's complaint was outside OAH jurisdiction. OAH received no response.

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. The allegations of a change of placement are within OAH jurisdiction notwithstanding the ongoing TRO proceedings. Accordingly, the motion to dismiss is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

A handwritten signature in cursive script that reads "June Lehrman".

June Lehrman

Administrative Law Judge

Office of Administrative Hearings