

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

BEVERLY HILLS UNIFIED SCHOOL DISTRICT,

V.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2022020444

ORDER DENYING MOTION TO DISMISS AND MOTION
FOR LEAVE TO REQUEST SANCTIONS

FEBRUARY 28, 2022

On February 18, 2022, Student filed a motion to dismiss, or a continuance of the hearing dates, and requested leave to file sanctions with the Office of Administrative Hearings. On February 23, 2022, Beverly Hills Unified School District, called Beverly Hills, filed a response opposing the dismissal, and agreeing to a hearing continuance if the parties agreed on the dates. On February 25, 2022, Student filed reply to Beverly Hills' response.

Student's motion and reply argued that because the California Department of Education, called CDE, determined that Beverly Hills unnecessarily delayed in responding to Parents' request for independent occupational therapy and transition assessments,

Beverly Hills' complaint asking OAH to determine if its October 2021 assessments were appropriate should be dismissed. Student argued that Beverly Hills' complaint, filed with OAH after CDE's order Beverly Hills to fund the independent assessments, constituted a bad faith attempt to evade the CDE's order. Therefore, Student also requested leave to request sanctions against Beverly Hills.

Beverly Hills argued that Student's motion to dismiss was akin to a summary judgment motion, and inappropriate. Beverly Hills also argued that Student's request for leave to file a request for sanctions was unripe for OAH's determination because Student did not request sanctions, but for leave to request sanctions. Beverly Hills also represented that it was not opposed to a brief hearing continuance.

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, and a review of the substance of CDE's determination and its impact on the OAH case. Accordingly, the motion to dismiss is denied. Accordingly, Student's motion for leave to request sanctions is also denied.

Student's motion for a hearing continuance, will be considered at the prehearing conference. The parties are ordered to meet and confer before the prehearing

conference regarding acceptable hearing dates and be prepared to discuss the proposed dates at the prehearing conference. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Sabrina Kong

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Administrative Law Judge

Office of Administrative Hearings