BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

ANAHEIM ELEMENTARY SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NUMBER 2020090678

ORDER DENYING MOTION TO DISMISS COMPLAINT

OCTOBER 22, 2020

On September 21, 2020, Anaheim Elementary School District filed with the Office of Administrative Hearings, referred to as OAH, a Request for Due Process Hearing, called a complaint, naming Student. On September 29, 2020, Parents on behalf of Student filed a motion to dismiss the complaint. OAH denied the motion to dismiss on September 30, 2020. OAH denied the motion to dismiss because the motion was not limited to matters facially outside OAH's jurisdiction and factual disputes exist requiring an evidentiary hearing. The September 30, 2020 Order Denying Motion to Dismiss Complaint was served on Student by email and mail on September 30, 2020.

On October 19, 2020, OAH served Student by email an Order Following Prehearing Conference for Hearing by Videoconference dated October 19, 2020. The October 19, 2020 Order required that any motion that was not filed three business days

before the prehearing conference shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not timely filed.

On October 20, 2020, Student filed another motion to dismiss the complaint. No declaration was filed in support of the motion establishing good cause as to why the motion was not filed three business days prior to the October 19, 2020 prehearing conference. Anaheim Elementary filed an opposition on October 21, 2020. Student filed an objection to the opposition on October 22, 2020. Anaheim Elementary filed a statement in response to Student's objection the same day.

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.

Student's motion to dismiss is denied on two grounds. First, Student failed to comply with the October 19, 2020 Order Following Prehearing Conference for Hearing by Videoconference in establishing good cause by way of a declaration as to why the motion to dismiss was not filed three days prior to the October 19, 2020 prehearing conference. Therefore, the motion to dismiss is untimely and is denied on that basis.

Second, the motion to dismiss is not limited to matters that are facially outside of OAH's jurisdiction, but instead seeks a ruling on the merits. An evidentiary hearing is required to allow the parties to present evidence such as testimony and documents to resolve the factual disputes in this matter, specifically whether Parents failed to make Student available to Anaheim Elementary for assessments and impeded Anaheim Elementary's ability to assess him. Accordingly, the motion to dismiss is denied.

All dates currently set in this matter are confirmed. The hearing shall begin on October 27, 2020, at 9:30 AM. Unless otherwise ordered, participants are required to appear by videoconference using a webcam and Microsoft Teams. In the event Parent is unable to join the hearing by video, Parent may appear for the first day of hearing by audio by calling the following telephone number and entering the conference ID number:

Telephone: 1-916-245-8550 or 1-213-204-8273

Conference ID: 592 793 060#

Any motions filed prior to the hearing shall be supported by a declaration under penalty of perjury establishing good cause as to why the motion was not filed three business days prior to the October 19, 2020 prehearing conference and will addressed on the first day of the hearing.

IT IS SO ORDERED.

DocuSigned by:
Rommel P. Cruz
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Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings