BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. BALDWIN PARK UNIFIED SCHOOL DISTRICT, COVINA VALLEY UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2012031078
BALDWIN PARK UNIFIED SCHOOL DISTRICT, COVINA VALLEY UNIFIED SCHOOL DISTRICT v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012070228 ORDER DENYING STUDENT'S MOTION TO DISMISS OAH CASE NO. 2012070228

On March 19, 2013, at the end of the fifth day of the due process hearing in this consolidated matter, Student moved to dismiss the joint due process complaint filed by Baldwin Park Unified School District and Covina Valley Unified School District (Districts), OAH Case Number 2012070228.[1] The Districts orally opposed the motion. The undersigned Administrative Law Judge (ALJ) ordered the parties to submit briefs of not longer than five pages supporting their positions on the motion by March 25, 2013. The parties timely filed their briefs. For the reasons stated below, Student's motion is denied.

APPLICABLE LAW

If a school district determines that the proposed special education program component of an individualized education program (IEP) to which a parent does not consent is necessary to provide a free appropriate public education (FAPE) to the child, the LEA shall initiate a

[1] Student also included a motion to dismiss the Districts' complaint in his supplemental pre-hearing conference statement filed with OAH on March 1, 2013. The undersigned ALJ denied the motion, which was opposed by the Districts, during the pre-hearing conference on March 4, 2013.

due process hearing in accordance with Section 1415(f) of Title 20 of the United States Code. (Ed. Code, § 56346, subds. (d) & (f).) When a school district seeks to prove that it provided a FAPE to a particular student, it must also show that it complied with the procedural requirements under the IDEA. (*Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley* (1982) 458 U.S. 176, 200, 203-204, 206-207 [102 S.Ct. 3034, 73 L.Ed.2d 690].)

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.

DISCUSSION AND ORDER

The Districts filed their joint due process complaint on July 9, 2012. The complaint states a single issue: whether Student's May 11, 2012 IEP offered Student a FAPE such that Districts may implement it in its entirety without parental consent. The Districts' proposed resolution seeks an order authorizing the Districts to implement the IEP in its entirety without parental consent.

Student contends that, because evidence at hearing established that the Districts were implementing goals and services in the May 2012 IEP (admitted as Exhibit 22 at hearing) pursuant to parental consent, the District's proposed resolution is moot, and therefore the ALJ should order District's complaint dismissed. Student offered no legal authority to support his motion.

The Districts contend that the issue at hearing is whether the May 2012 IEP offered Student a FAPE, not whether the remedy sought is appropriate. Additionally, District argues that the evidence at hearing established that the District implemented portions of the May 2012 IEP pursuant to Student's mother's (Mother) provisional written consent to the May 2012 IEP. In particular, Exhibit 22 includes Attachment A, which is a statement written by Mother. It states in relevant part: "I am providing provisional consent only. I continue to disagree with the IEP, but am consenting to have it implemented on a temporary and provisional basis while due process is pending." Mother goes on to state: "This consent to implement the IEP is also contingent on current speech, AVT and/or oral rehabilitation services provided under last years [sic] IEP remain in full force and effect." The Districts assert that this language effectively acknowledged Student's right to stay put based upon Student's May 12, 2011 IEP and does not resolve the District's issue for hearing.

Student's position is not persuasive. The issue in the Districts' complaint is whether the May 2012 IEP offer was an offer of FAPE, not whether the remedy sought by District is viable or being implemented in part through other means. The Districts are entitled to findings by the ALJ on the issue of FAPE based upon the evidence presented at hearing. Accordingly, Student's motion is denied.

IT IS SO ORDERED.

Dated: March 26, 2013

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings