

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VICTOR VALLEY UNION HIGH
SCHOOL DISTRICT AND DESERT
MOUNTAIN SELPA.

OAH CASE NO. 2010060578

ORDER DENYING MOTION TO
DISMISS

On June 08, 2010, Student filed a Request for Mediation and Due Process Hearing (complaint) naming Victor Valley Union High School District (District) and Desert Mountain Special Education Local Plan Area (SELPA).

On June 16, 2010, the District and SELPA filed a motion to dismiss claims in the complaint that occurred on or before March 16, 2010, based on the terms of the parties' March 16, 2010 Settlement Agreement (Settlement Agreement) (OAH Case No. 2009120327). On June 24, 2010, OAH denied the motion to dismiss because the District and SELPA failed to include a copy of the Settlement Agreement. On June 21, 2010, District and SELPA filed a Notice of Insufficiency (NOI) as to Student's complaint. On June, 24, 2010, OAH issued an Order finding the complaint was sufficient under section 1415(b)(7)(A)(ii).

On July 2, 2010, the District and SELPA re-filed their motion to dismiss and included a copy of the Settlement Agreement. The District's motion to dismiss all claims against it in the complaint that occurred on or before March 16, 2010, was granted. Those claims remained viable against the SELPA as it had not been a party in the prior case.

On August 12, 2010, the District and SELPA filed a Motion to Dismiss, alleging that on or about July 1, 2010, Parent signed and consented to Student's June 8, 2010 IEP except for ten issues listed in a July 1, 2010 letter attached to the signature page. District requests that OAH dismiss all the issues in Student's complaint except for the ten disputed issues because District asserts that controversies that are no longer in dispute are outside the scope of OAH's subject matter jurisdiction. On August 16, 2010, Student filed an Opposition. On August 24, 2010, District and SELPA filed an Amended Motion to Dismiss, because they did not attach copies of Exhibits A-C to the Motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

Student’s 31 page complaint raises numerous issues which center on the District and the SELPA’s alleged failure to offer Student a FAPE at the May 21, 2010 IEP. On June 24, 2010, OAH issued an Order finding the complaint was sufficient. This Order clarified and listed Student’s issues as follows (1) failing to accommodate Student’s unique needs, (2) refusing to provide experienced one-to-one aides trained and certified in the teaching and support of autistic children, (3) failing to provide an appropriate placement, (4) failing to have the required personnel present at the May 21, 2010, Individualized Educational Program (IEP) team meeting, (5) failing to modify Student’s curriculum to meet his unique needs, (6) failing to comply with the prior IEPs, (6) failing to properly implement the IEP, (7) failing to provide the proper academic instruction in accordance with Student’s unique needs, (8) failure of the May 21, 2010, IEP to provide an offer of placement in the least restrictive environment, (9) failure of the May 21, 2010 IEP to provide appropriate related services, (10) failing to provide a behavior support plan and behavior intervention services, (11) failing to assess Student in the areas of speech, occupational therapy, and behavior and to appropriately conduct a psychoeducational evaluation, and (12) failing to protect Student from harm by other students. The complaint also asserted claims for District and SELPA’s alleged failure to comply with a mediated settlement agreement dated March 16, 2010.

On July 16, 2010, OAH issued an Order granting District’s Motion to dismiss all claims against District that occurred on or before March 16, 2010, because the District and Student entered a Settlement Agreement resolving all claims. Thus, Student’s claims are limited in time from March 16, 2010 to June 3, 2010, the date Student filed this complaint, and only to District’s offer at the May 21, 2010 IEP of placement and services for the 2010-

2011 school year. On June 8, 2010, another IEP team meeting was held to discuss Student's 2010-2011 school year and Student consented to this IEP with ten exceptions.

District in its Motion to Dismiss, requests that parts of the complaint be dismissed because Student resolved some claims against the District when Student consented to the June 8, 2010 IEP with the exception of ten issues listed in Parent's July 1, 2010 letter. In this letter, Parent wrote that she agreed with the June 8, 2010 IEP except for comments made by the IEP team, placement and the time line on certain services. She also listed ten items that she disagreed with including, the "Tri-Annual," discontinuing the log book, placing Student at High Desert Haven, comments regarding Student not being ready for inclusion, phasing out Student's CIBA aide for a District aide, and District's communicating with Parent by e-mail and not by log. However, in his Opposition Student asserts that "Defendants" still violated the IDEA and the issues of proper services, assessments, accommodations and modifications and placement still remain.

Clearly, the parties do not agree on what issues have been resolved for the 2010-2011 school year when Parent signed the June 8, 2010 IEP and what remain. Because District's Motion fails to list the issues that had been resolved and only the signature page of the IEP was provided, District fails to provide evidence to support its Motion. Furthermore, any facts which postdate the filing date of June 8, 2010, are irrelevant to the issues in this matter absent an amended complaint. Thus, District's Motion to Dismiss must be denied at this time.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: September 03, 2010.

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings