

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BALDWIN PARK UNIFIED SCHOOL  
DISTRICT AND COVINA-VALLEY  
UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012031078

ORDER GRANTING MOTION TO  
DISMISS ISSUE TWO BY BALDWIN  
PARK UNIFIED SCHOOL DISTRICT

On March 27, 2012, Parent on behalf of Student (Student) filed a Due Process Hearing Request<sup>1</sup> (complaint) naming the Baldwin Park Unified School District (BPUSD) and the Covina-Valley Unified School District (CVUSD) as respondents. On April 9, 2012, BPUSD filed a Notice of Insufficiency (NOI) of Due Process Complaint and Motion to Dismiss. On April 11, 2012, the Office of Administrative Hearings (OAH) issued an Order of Determination of Sufficiency of Due Process Complaint and Granting Motion to Dismiss Issue Two on grounds that OAH lacked jurisdiction to hear the claims alleged..

On April 16, 2012, Student filed an amended complaint containing two issues. Issue One alleges that BPUSD and CVUSD have failed to provide Student a FAPE in the May 12, 2011 Individualized Education Program (IEP), and subsequent amendments dated July 15, 2011, and August 4, 2011, as the IEP goals and placement failed to meet Student's unique needs as a deaf and hard of hearing (DHH) student, whose primary language is American Sign Language (ASL). Issue Two re-alleges the original Issue Two of the complaint that the respondents are violating two federal statutes, Section 504 of the Rehabilitation Act of 1973 (Section 504) and the Americans with Disabilities Act (ADA) (29 U.S.C. § 701 et seq.).

On April 23, 2012, CVUSD filed a NOI as to Issue One and a motion to dismiss Issues One and Two of Student's amended complaint. On April 25, 2012, OAH issued an order determining that Issue One of the amended complaint was insufficient as to CVUSD because there were no allegations that CVUSD had any role in the IEP decision-making process. The order also dismissed Issue Two on grounds that OAH lacked jurisdiction to hear the claims alleged.

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

On April 30, 2012, Student filed with OAH a notice to partially withdraw Issue Two only as to CVUSD.

On April 30, 2012, BPUSD filed a Motion to Deny Student's Notice of Partial Withdrawal of Issue Two, Motion to Strike Issue Two, Notice of Insufficiency, and Motion to Dismiss the Second Amended Complaint. The Student has not filed a responsive pleading to BPUSD's pleading. For purposes of this order, BPUSD's motion to deny the notice of partial withdrawal and to strike Issue Two is deemed a motion to dismiss Issue Two. BPUSD's Notice of Insufficiency and Motion to Dismiss the Second Amended Complaint will be determined in a separate written order.

#### APPLICABLE LAW AND DISCUSSION AS TO MOTION TO DISMISS ISSUE TWO

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.

Student's Issue Two alleges the Districts violated Section 504 of the Rehabilitation Act of 1973 and the ADA (29 U.S.C. § 701 et seq.). BPUSD correctly contends these allegations must be dismissed because OAH lacks jurisdiction. Parents have 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).) OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) OAH does not have jurisdiction over section 504 claims and civil rights claims, and these claims must be dismissed.

#### ORDER

BPUSD's motion to dismiss Issue Two of Student's amended complaint is GRANTED.

Dated: May 8, 2012

/s/

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ROBERT HELFAND

Administrative Law Judge

Office of Administrative Hearings