BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. LAKESIDE UNION SCHOOL DISTRICT,	OAH CASE NO. 2012071004
LAKESIDE UNION SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012050216 ORDER DENYING STUDENT'S MOTION TO DISMISS COMPLAINT IN CASE NUMBER 2012050216

The Lakeside Union School District (District) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request in OAH Case Number 2012050216 on May 4, 2012 naming Parent on behalf of Student (Student) as respondent. The District seeks an order that the decision by the Individualized Education Program (IEP) team made on January 11, 2012 to exit Student from special education was appropriate. On July 30, 2012, Student filed her Due Process Hearing Request (complaint), naming the District as respondent. The complaint contains two issues. On July 30, 2012, Student filed a motion to consolidate the two cases which was granted by OAH on August 7, 2012.

On August 13, 2012, Student filed an amended complaint containing six issues without simultaneously filing a motion for leave to file an amended complaint. Since Student can not file an amended complaint without seeking wither OAH permission or by stipulation with the respondent, Student's filing of the amended complaint is deemed to be a motion for leave to file the amended complaint.

On August 14, 2012, the District filed a Motion to Dismiss, or in the alternative, a Notice of Insufficiency regarding the amended complaint. Because the District is contending that the amended complaint is not sufficient, District's Notice of Insufficiency (NOI) was deemed an opposition to Student's request for leave to file the amended complaint. On August 17, 2012, OAH issued an order denying Student leave to file her amended complaint and denying District's motion to dismiss as moot.

On August 20, 2012, the District filed a motion for clarification seeking to have OAH rule on its motion to dismiss which the District contends is applicable to Student's original complaint. On August 23, 2012, OAH granted District's motion for reconsideration of its motion as it relates to the original complaint and also found the complaint sufficient.

On August 20, 2012, Student filed a motion to dismiss the District's complaint in OAH Case Number 2012050216 on grounds that the settlement agreement executed by the parties in July 2011 bars the District's one issue. On August 24, 2012, the District filed its opposition to Student's motion to dismiss. On August 27, 2012, Student filed a reply to the District's opposition.

STATEMENT OF UNDISPUTED FACTS[1]

Student is currently attends kindergarten. She became eligible for special education services on January 15, 2010, under the eligibility category of autistic-like behaviors. Student's IEP called for Student to receive specialized academic instruction and speech/language services. At an IEP meeting on December 7, 2011, the IEP team reviewed Student's progress on her goals and a re-evaluation of Student, the District IEP team members found that Student no longer was eligible for special education services. Student's parents (Parents) disagreed with the District members. On April 11, 2011, Parents filed for Mediation Only with OAH. Mediation was held on May 19, 2011. Thereafter, the parties reached an agreement which was reduced to writing in July.[2] Pursuant to that agreement, the District provided certain designated services to Student through the Extended School Year (ESY) of 2011 and through the beginning of school year 2011-2012.

On December 7, 2011, an IEP meeting was held and the District IEP team believed that Student had met the criteria for her aide service to be discontinued. Parents disagreed. It was agreed that the aide services would continue to the next IEP meeting where a new evaluation of Student would be reviewed.

On January 11, 2012, the IEP team convened another meeting where the District assessment was reviewed and discussed. Based on the District assessment, the District IEP team members determined that Student no longer was eligible for special education services. Parents requested additional time to consider the District assessments and they were given to a later date to respond. On February 10, 2012, Parents responded by informing the District that they did not consent to Student being exited from special education services.

---

[1] The facts are derived from the facts alleged in both the District and Student complaints as well various pleadings filed by the parties.

[2] Parents executed the settlement agreement on July 11, 2011 while the District representative signed on July 14, 2011. (See Exhibit A to Student's motion to dismiss, which is a copy of the settlement agreement.)

THE SETTLEMENT AGREEMENT OF JULY 2011

The settlement agreement clearly states that the nature and status of the dispute is based on four IEP meetings which occurred on January 20, 2011; February 10, 2011; March 4, 2011; and March 24, 2011 which were the subject of the April 11, 2011 Mediation Only request filed by Parents with OAH.

The agreement also states that the purpose of the agreement is:

"The purpose of this Agreement is to resolve fully, finally, and forever any and all educational claims, rights, demands, or causes of action between the District and Parent and/or Student over which OAH has jurisdiction relating to *Student's education arising under the Action*[3] [emphasis added], including without limitation all educational claims, rights, demands or causes of action that were raised or that could have been raised by Parent and/or Student in the Action over which OAH has jurisdiction, through the effective date of this Agreement. The Parties recognize that legal proceedings would be required to resolve their respective positions and such proceedings would result in the expenditure of significant amounts of money, energy, time and personnel resources which the Parties wish to avoid and/or minimize."

The settlement agreement contains a section entitled "Waiver," which clearly states that the agreement settles any and all educational claims or disputes arising under OAH jurisdiction through January 15, 2012 including the identification, assessment, evaluation, provision of a free appropriate public education for Student, and issues regarding procedural matters by the District." The section also exempts any claims regarding the provision of aide services during school year 2011-2012.

In the section entitled "Release," the following is written:

"In consideration for the promises contained in this Agreement, the Parties release one another and their respective officers, executives, agents, attorneys, administrators, employees, and all members of the governing board, both former and present, from any and all educational claims, proceedings, causes of action, and rights and complaints of whatever kind or nature *arising under OAH's jurisdiction and related to the Action through the date of this Agreement.*" [Emphasis added.]

DISCUSSION

The settlement agreement encompasses any and all educational claims and disputes which relate to the identification, assessment, evaluation, provision of a FAPE, and procedural violations committed by the District which relate to the Student's Mediation Only

[3] Earlier in the settlement agreement, "the action" is defined as OAH Case Number 2011040524, which is the Mediation Only action filed by Parents.

Request of April 11, 2012. The waiver Clause exempts any claims of Student arising out of the provision of aide services during school year 2011-2012. The proper reading of the settlement agreement is that the parties agreed to not file any due process requests involving the provision of special education services and whether Student received FAPE. The District was also precluded from bringing an action to have its prior evaluations found to be appropriate.

The District complaint concerns the decision of the IEP team at the January 11, 2012 meeting to exit Student from special education. This has no relation to the April 11, 2012 OAH Mediation Only matter. Additionally, the IEP team decision to exit Student from special education did not go into effect until after January 15, 2012. Thus, the settlement agreement does not bar this action.

If Student's rationale is extended to both parties, then neither could challenge the IEP team decision to exit Student from special education.

ORDER

The Student's motion to dismiss the District's complaint in OAH Case Number 2012050216 is DENIED.

Dated: August 27, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings