

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

VAL VERDE UNIFIED SCHOOL  
DISTRICT AND RIVERSIDE COUNTY  
OFFICE OF EDUCATION.

OAH CASE NO. 2010020079

ORDER GRANTING AND DENYING  
MOTIONS TO DISMISS

On February 1, 2010, Parents on behalf of Student, through counsel, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (Complaint) that named the Val Verde Unified School District (District) and the Riverside County Office of Education (RCOE).

On February 9, 2010, the District filed with OAH a Notice of Insufficiency regarding the Complaint. (See 20 U.S.C. § 1415(b)(7)A(ii); Ed. Code, § 56502, subd. (d)(1).)

On February 10, 2010, OAH issued an Order on the District's Notice of Insufficiency. The Order determined that Issue 2 in the Complaint was sufficient, but that Issues 1 and 3 in the Complaint were insufficient. The Order gave Student 14 days, or by February 24, 2010, to file an Amended Complaint in the matter.

On February 16, 2010, RCOE filed with OAH a Notice of Insufficiency regarding the Complaint.

On February 23, 2010, OAH issued an Order on the Notice of Insufficiency of RCOE. The Order determined that the three issues in Student's Complaint were insufficient as regards RCOE. The Order gave Student 14 days, or by March 9, 2010, to file an Amended Complaint.

On February 23, 2010, Student filed with OAH a First Fully Integrated Request for Due Process (Amended Complaint) that named the District and RCOE. The Amended Complaint contains five issues and alleges that respondents violated Section 504 of the Rehabilitation Act of 1973, and 42 U.S.C. section 1983.

On February 23, 2010, OAH issued a Scheduling Order as concerns the Amended Complaint. The Scheduling Order sets in this matter a prehearing conference for April 12, 2010, and a due process hearing for April 19, 2010.

On March 11, 2010, the District filed with OAH a Motion to Dismiss and Response to the Amended Complaint. The District's Motion to Dismiss seeks to strike the allegations in the Amended Complaint based upon Section 504 of the Rehabilitation Act of 1973 and 42 U.S.C. section 1983.

On March 18, 2010, RCOE filed with OAH a Request for Dismissal Per Determination of Sufficiency Dated February 23, 2010 (RCOE Motion to Dismiss). The RCOE Motion to Dismiss seeks a dismissal of RCOE from this case because, although Student has filed an Amended Complaint, she did not file an Amended Complaint in response to the OAH Order, dated February 23, 2010, issued in response to RCOE's Notice of Insufficiency to the original Complaint.

On March 18, 2010, Student filed with OAH an Opposition to the RCOE Motion to Dismiss. On March 22, 2010, the District filed with OAH an Opposition to the RCOE Motion to Dismiss. On March 26, 2010, RCOE filed with OAH a Reply to the Oppositions to its Motion to Dismiss.

The Motion to Dismiss brought by the District is well-taken. OAH does not have the authority to mediate, hear and decide issues relating to Section 504 of the Rehabilitation Act of 1973 and 42 U.S.C. section 1983.

The Motion to Dismiss brought by RCOE is not well-taken. Following the OAH Order, dated February 9, 2010, upon the District's Notice of Insufficiency, Student filed an Amended Complaint which included factual allegations and charges against both the District and RCOE. This Amended Complaint serves as an amended pleading in response to the OAH Order upholding the Notice of Insufficiency brought by RCOE. A contrary ruling would require Student to file two separate pleadings based upon the same facts and law, a requirement which is not practical and which would cause much additional time and expense for the parties and for OAH.

## ORDER

1. The Motion to Dismiss brought by Val Verde Unified School District as regards the First Fully Integrated Amended Request for Due Process Hearing is granted. The charges in the Amended Complaint relating to Section 504 of the Rehabilitation Act of 1973 and 42 U.S.C. section 1983 are hereby dismissed.
2. The Request for Dismissal Per Determination of Sufficiency Dated February 23, 2010, brought by the Riverside County Office of Education, is denied.
3. The hearing dates in this case shall remain as calendared.

IT IS SO ORDERED.

Dated: April 06, 2010

/s/

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TIMOTHY L. NEWLOVE  
Presiding Administrative Law Judge  
Office of Administrative Hearings