

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 GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS

On June 8, 2010, Student filed a Request for a Due Process Hearing (complaint) against the Victor Valley Union High School District (District) and Desert Mountain SELPA (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). In addition, they assert that the Office of Administrative Hearings (OAH) lacks jurisdiction to hear several of Student's claims. OAH received no response from Student to the motion to dismiss. 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 July 2, 2010, the District and SELPA re-filed their motion to dismiss and included a copy of the Settlement Agreement. OAH received no response from Student to the motion to dismiss.

APPLICABLE LAW

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*].)

This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by

the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO orders" was the California Department of Education's compliance complaint procedure (Cal. Code Regs., tit. 5, § 4600, et. seq.), and that "a subsequent due process hearing was not available to address . . . alleged noncompliance with the settlement agreement and SEHO order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.*, 2007 U.S. Dist. LEXIS 26541 (N.D. Cal. 2007), the District Court held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), record keeping requirements pursuant to Family Educational Rights and Privacy Act (FERPA). (20 U.S.C. § 1232; 34 C.F.R. § 99.3), the Autism Authorization Act (AAA), the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.), and under No Child Left Behind (NCLB) (34 C.F.R. §§ 300.18(f), 300.156(e)).

## DISCUSSION

The District and SELPA request an order precluding Student from litigating all claims in the complaint that occurred on or before March 16, 2010, and an order dismissing all those claims. The District and SELPA contend that Student released all claims against the District and SELPA as of the date of the fully executed Settlement Agreement. The District and SELPA further contends that OAH lacks jurisdiction over those claims in the complaint related to alleged violations of Section 504, FERPA, AAA, ADA and NCLB.

Regarding Student's claims that occurred on or before March 16, 2010, the terms of the Settlement Agreement are clear that the parties resolved all claims that occurred through March 16, 2010, as against the District. The SELPA was not a party to OAH Case No. 2009120327, and the Settlement Agreement does not refer to Student waiving any claims against the SELPA. Therefore, only Student's claims in the complaint that occurred on or before March 16, 2010, as alleged against the District are dismissed.

Regarding Student's claims that the District and SELPA violated Section 504, FERPA, AAA, ADA and NCLB, OAH does not have jurisdiction to hear these claims.

Therefore, Student's claims that the District and SELPA violated Section 504, FERPA, AAA, ADA and NCLB are dismissed.

ORDER

1. The District's motion to dismiss all claims against it in the complaint that occurred on or before March 16, 2010, is granted.

2. The SELPA's motion to dismiss all claims against it in the complaint that occurred on or before March 16, 2010, is denied.

3. The District's and SELPA's motion to dismiss Student's claims that the District and SELPA violated Section 504, FERPA, AAA, ADA and NCLB is granted.

IT IS SO ORDERED.

Dated: July 16, 2010

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings