

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2011080031

v.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT, DESERT MOUNTAIN SELPA
AND SAN BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS,

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

OAH CASE NO. 2011080382

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING RESPONDENTS'
MOTION TO LIMIT AND/OR DISMISS
ISSUES

BACKGROUND INFORMATION

On July 28, 2011, Student filed a request for due process (complaint) with the Office of Administrative Hearings (OAH), naming the Victor Valley Union High School District (District), the Desert Mountain Special Education Local Plan Area (SELPA), the San Bernardino County Superintendent of Schools (Superintendent), and the San Bernardino County Education Support Services Division (all educational entities are collectively referred to here as respondents).¹ On August 8, 2011, the District filed a complaint naming Student as respondent. OAH found Student's complaint insufficient in an Order dated August 15, 2011. Student thereafter filed an amended complaint on August 31, 2011.

Respondents did not file a notice of insufficiency as to Student's amended complaint. Rather, on October 7, 2011, respondent's filed motion to limit and/or dismiss issues in Student's amended complaint.² Student filed an opposition to Respondents' motion on

¹ On October 26, 2011, OAH dismissed the San Bernardino County Education Support Services Division as a party to this matter.

² Attached to Respondents' motion are approximately 230 pages of supporting document. Approximately 130 of those pages consist of pleadings or OAH orders filed in

October 11, 2011. Student's opposition does not address any of the issues raised in the motion to limit and/or dismiss issues. Rather, it is a collection of outside references to issues concerning one of Respondents' attorneys, none of which pertain to this case. Therefore, Student's opposition has not been considered as a basis for ruling on Respondents' motion.

On October 13, 2011, Respondents filed a reply to Student's opposition.

DISCUSSION

Respondents seek to limit or dismiss many of Student's issues on two grounds. First, Respondents state that the parties entered into a settlement agreement on March 16, 2010, in which Student agreed to waive any and all claims against respondents up to and including that date. Respondents attached a copy of the settlement agreement in support of that contention. Respondents also move to dismiss any issue brought by Student in his amended complaint related to Student's individualized education plans (IEPs) dated May 21, 2010, June 8, 2010, and June 2, 2011, where Student's mother has provided partial consent to the IEPs at issue.

As an initial observation, respondents' motion is not based on the information found in Student's amended complaint or in attachments to that complaint. Rather, respondents based their motion on IEPs and correspondence that are outside of the four corners of the amended complaint. Respondents' motion therefore is a motion for summary judgment rather than a motion to dismiss.

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. Here, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. On that basis alone, the majority of issues contained in respondents' motion are outside the scope of a motion to dismiss and, on that basis, respondents' motion is denied. However, this order will also address separately each ground for dismissal respondents raise in their motion.

Settlement Agreement

Respondents contend that Student is estopped from bringing some of the issues raised in his amended complaint based upon Student's agreement to waive all claims up to the date of the settlement agreement Student entered into on March 16, 2010. First, although respondents filed a joint motion to dismiss, only respondent Victor Valley Union High School District was a signatory to the agreement. Respondents fail to acknowledge that fact

this case. It is unnecessary for Respondents to attach pleadings and orders already in the official OAH file in this matter. It is sufficient for Respondents to identify a pleading or order and the date it was filed, and to incorporate that document by reference.

in their motion, and therefore fail to discuss why the settlement agreement prevents Student from raising allegations against the SELPA or the Superintendent for any time within the two-year statute of limitations. Therefore, the motion of the SELPA and the Superintendent to dismiss those portions of Student's amended complaint relating to issues occurring prior to March 17, 2010, is denied, as they were not parties to the settlement agreement.

Additionally, respondents fail to identify which of the issues in Student's voluminous amended complaint relate to the time period prior to March 17, 2010. Respondents apparently intended for OAH to have to sift through each issue raised to determine which, if any, of Student's allegations are barred by the settlement agreement. The undersigned Administrative Law Judge has done just that. Approximately the first 28 pages of Student's amended complaint pertain to the District. None of the issues alleged against the District appear to cover the time period prior to the signing of the agreement. The District's motion to dismiss is therefore denied.

Consent to Portions of Student's IEPs

Respondents also move to dismiss portions of Student's amended complaint on the grounds that the partial consent by Student's mother to portions of Student's relevant IEPs limits Student's issues to only those portions of his IEPs to which his mother has not consented. In effect, respondents are contending that a parent waives her right to bring a due process complaint regarding any portion of an IEP to which she has consented. Respondents provide absolutely no legal authority in support of this contention either by citation to statute or to case law. Respondents' motion is therefore denied on that basis as well.

ORDER

Respondents' motion to dismiss and/or limit issues is denied. The matter shall proceed as scheduled.

Dated: November 3, 2011

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings