

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

v.

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

OAH CASE NO. 2011080031

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2011080382

ORDER GRANTING MOTION TO
DISMISS SAN BERNARDINO COUNTY
EDUCATION SUPPORT SERVICES
DIVISION AND DENYING AS TO SAN
BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS

On August 31, 2011, Student filed an amended Request for Due Process Hearing (amended complaint) against the Victor Valley Union High School District (District), Desert Mountain Special Education Local Plan Area (SELPA), San Bernardino County Superintendent's Office (Superintendent's Office) and San Bernardino County Education Support Services Division (Support Services).

On October 13, 2011, the Superintendent's Office and Support Services filed a Motion to Dismiss, alleging that Student did not serve them with a copy of the amended complaint and that they are not public agencies responsible for providing Student with special education services. On October 17, 2011, Student filed an opposition. On October 18, 2011, the Superintendent's Office and Support Services filed a reply brief.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other

public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

The party requesting a special education due process hearing is required to provide the opposing party with notice of the complaint by delivering a copy of the complaint. (20 U.S.C. § 1415(b)(7)(A); Ed. Code, § 56502, subd. (c).) Education Code section 56502, subdivision (c), requires that the party filing the request provide the opposing copy with notice of the complaint at the same time that it is filed with the Office of Administrative Hearings.

DISCUSSION

As to Superintendent’s Office’s and Support Services’ motion to dismiss, the evidence establishes that Support Services is not an appropriate party because it is merely a unit of the Superintendent’s Office. As to the Superintendent’s Office, the amended complaint is sufficiently clear that Student intended to name the Superintendent’s Office as a party. Additionally, the amended complaint contains sufficient facts to create a triable issue as to whether the Superintendent’s Office is a responsible public agency. Therefore, Support Services established that it is not a public agency and should be dismissed, while the Superintendent’s Office did not establish that it should be dismissed a party.

Regarding the Superintendent’s Office’s contention that Student did not serve a copy of the amended complaint on it, the Superintendent’s Office did not provide adequate evidence that it had not received Student’s amended complaint. The proof of service attached to the amended complaint indicates that Student served a copy of the amended complaint on the Superintendent’s Office. Additionally, the September 27, 2011 motion for clarification indicates that the Superintendent’s Office received a copy of the amended complaint. According, the Superintendent’s Office motion to dismiss for inadequate service of the amended complaint is denied.

ORDER

1. Support Services’ Motion to Dismiss is granted.
2. The Superintendent’s Office’s Motion to Dismiss is denied.

Dated: October 26, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings