

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009010712

ORDER GRANTING MOTION TO
DISMISS

On January 27, 2009, Parents, on behalf of Student filed with the Office of Administrative Hearings (OAH) a Request for Mediation and Due Process Hearing (Complaint) that named the Los Angeles Unified School District (District).

On March 10, 2009, the District filed with OAH a Motion To Dismiss Petitioner's Request For Due Process Hearing Per Execution Of Final Settlement Agreement (Motion to Dismiss). On March 11, 2009, Student filed with OAH an Opposition to the Motion to Dismiss.

APPLICABLE LAW

Federal and state law regulating special education administrative proceedings require that, when parents file a due process complaint, within 15 days of receiving notice of such complaint, the public school district must convene a resolution session. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(2006); Ed. Code, § 56501.5, subd. (a)(1).) The purpose of the resolution session is to permit the parents of the child with special needs to discuss their complaint, and permit the school district to resolve the matter. (20 U.S.C. § 1415(f)(1)(B)(i)(IV); 34 C.F.R. § 300.510(a)(2)(2006); Ed. Code, § 56501.5, subd. (a)(4).) The school district has 30 days from receipt of the complaint to reach a resolution. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.510(b)(1)(2006); Ed. Code, § 56501.5, subd. (c).)

In the event that the parties reach an agreement at the resolution session, then the parties must execute a legally binding agreement that is signed by both the parents and a school district representative who has authority to bind the agency. (20 U.S.C. § 1415(f)(1)(B)(iii)(I); 34 C.F.R. § 300.510(d)(1)(2006); Ed. Code, § 56501.5, subd. (f)(1).) Such agreement is enforceable in any state court of competent jurisdiction or a federal district court. (20 U.S.C. § 1415(f)(1)(B)(iii)(II); 34 C.F.R. § 300.510(d)(2)(2006); Ed. Code, § 56501.5, subd. (f)(2).) A resolution session agreement is also enforceable through

the compliance complaint procedures of the state educational agency. (34 C.F.R. §§ 300.510(d)(2), 300.537 (2006).) Any party may void an agreement reached at a resolution session within three business days of the execution of the agreement. (20 U.S.C. § 1415(f)(1)(B) (iv); 34 C.F.R. § 300.510(e)(2006); Ed. Code, § 56501.5, subd. (g).)

DISCUSSION

The following are the pertinent facts that concern the Motion to Dismiss. On February 5, 2009, after the Student filed the Complaint, the District sent a response which scheduled a resolution session for the following week. On February 12, 2009, the parties held the resolution session. Shortly thereafter, the District offered Student's parent and attorney a Final Settlement Agreement and Release (Settlement Agreement). On February 16, 2009, Student's parent and attorney signed the Settlement Agreement. On February 18, 2009, a representative from the District signed the Settlement Agreement. February 18th was a Wednesday. Student and parent had three business days thereafter within which to void the agreement, or until Monday, February 23, 2009. (Ed. Code, § 9 ["the time in which any act provided by this code is to be done is computed by excluding the first day, and including the last. . ."].)

According to Student, on February 20 and 23, 2009, his attorney telephoned and left voice messages for the District representative who signed the Settlement Agreement. At least one voice message stated that Student's parent needed to rescind and replace one term in the Settlement Agreement. This term concerned the method of payment for the provision of compensatory language and speech services by a private provider. The Settlement Agreement contemplates that the District will pay the provider after the submission of appropriate documentation. Student's attorney proposed amending this method of payment by having the District reimburse Student's parent who would pay the provider directly. The District did not accept the proposed change. At no time, did Student's parent or attorney void or rescind the entire Settlement Agreement.

On March 5, 2009, Student, through his attorney, filed a Compliance Complaint with the California Department of Education (CDE). The Compliance Complaint recited the facts leading to the Settlement Agreement and the attorney's unsuccessful efforts to have the District agree to change the method of payment language. The Compliance Complaint alleges that the District violated Student's rights and the spirit of the 30 day resolution session by not consenting to make a minor change in the Settlement Agreement. CDE has 60 days to investigate and issue a report concerning the Compliance Complaint. (34 C.F.R. § 300.152(a)(2006); Cal. Code Regs., tit. 5, § 4662, subd. (b).)

The Motion to Dismiss contains a copy of the Settlement Agreement as an exhibit. The Settlement Agreement provides that "(T)his Agreement constitutes a full and final resolution of all claims and issues arising from or related to Student's educational program through the date of full execution of this Agreement, including, but not limited to, all of the claims and issues raised in, or related to, LAUSD Case No. N2009010712." The Settlement

Agreement further provides that Student agrees to request OAH to dismiss the Complaint with prejudice.

The Motion to Dismiss contends that the Settlement Agreement is final and divests OAH of the authority to hear and decide the Complaint. Student counters by contending that the Settlement Agreement is not final because his attorney voided the agreement through efforts to rewrite the clause relating to the method of payment for the private provider of speech and language services. The applicable law permits a party to “void” a resolution agreement within three business days of the execution thereof. (20 U.S.C. § 1415(f)(1)(B)(iv); 34 C.F.R. § 300.510(e)(2006); Ed. Code, §56501.5, subd. (g).) To “void” means to cancel, nullify or rescind. An agreement reached in a special education matter is considered a contract. (*D.R. v. East Brunswick Board of Education* (3d. Cir. 1997) 109 F.3d 896, 898.) In California, in order to void or rescind a contract, a party must promptly and clearly indicate the intention to cancel the agreement. (Civ. Code, § 1691; *McNeese v. McNeese* (1923) 190 Cal. 402, 405.) In this case, Student made no such clear intention to rescind the Settlement Agreement. Instead, Student’s attorney admits that the main concern was rewriting one paragraph in the Settlement Agreement. Since Student representatives did not make a clear indication of canceling the Settlement Agreement within three business days of the execution thereof, the agreement must stand.

OAH has the authority to hear and decide special education due process administrative disputes that concern the identification, assessment, educational placement and provision of a free appropriate public education (FAPE) for disabled children. (20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. § 300.507(a)(2006); Ed. Code, § 56501, subd. (a)(1)-(4).) OAH has limited authority to make decisions that concern final agreements reached in special education proceedings. (See e.g. *Wyner v. Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026; *Pedraza v. Alameda Unified School District*, 2007 U.S. Dist. LEXIS 26541 D. Cal. 2007) [OAH has jurisdiction to adjudicate claims alleging denial of FAPE as a result of the violation of a mediated settlement agreement].) In this case, the Settlement Agreement between Student and the District resolved all claims and issues in the Complaint. Based upon the foregoing authority and the language of the Settlement Agreement, OAH does not have jurisdiction to hear the Complaint and must dismiss the matter.

Student contends that, instead of deciding the Motion to Dismiss, OAH must await the outcome of the CDE investigation of Student’s Compliance Complaint. In particular, Student requests that OAH await a decision by CDE on whether the District denied Student’s right to rescind the Settlement Agreement. The federal regulations that supplement the Individuals with Disabilities Education Act (IDEA) require the State Educational Agency in participating states to implement a complaint process. (34 C.F.R. § 300.151(a)(1)(i)(2006).) California has complied with this requirement. (Ed. Code, § 56500.3; Cal. Code Regs., tit. 5, §§ 4600-4670.) The state compliance complaint process is recognized as an alternative to an impartial due process hearing for bringing an IDEA challenge. (*Lucht v. Molalla River School District* (9th Cir. 2000) 225 F.3d 1023, 1025-1026.) When a party files both a state compliance complaint and a due process complaint, “the State [i.e., CDE] must set aside any

part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.” (34 C.F.R. § 300.152(c)(1)(2006).)

In this case, Student assumes that CDE will treat his Compliance Complaint as separate and distinct from his Request for Mediation and Due Process Hearing. This assumption may not be correct since the subjects of Student’s Due Process Complaint and Compliance Complaint overlap. The subject of the Due Process Complaint concerns Student’s educational program and the subject of the Compliance Complaint concerns an agreement resolving issues relating to such program. Under the above authority, it is more probable that CDE would hold Student’s Compliance Complaint in abeyance until there is a decision or resolution of the Due Process Complaint. (34 C.F.R. § 300.152(c)(1)(2006).) However, even if Student’s assumption is correct, and CDE undertakes an investigation of the Compliance Complaint and issues a report of the investigation, the report is not binding on OAH. At most, the report will be evidence that OAH considers in making a decision on the Complaint. As stated above, the record in this case clearly shows that Student, through his representatives, did not void or rescind the Settlement Agreement within three business days of the execution thereof. As such, OAH need not wait for CDE to investigate and report upon Student’s Compliance Complaint before deciding the District’s Motion to Dismiss.

ORDER

GOOD CAUSE APPEARING, the Motion to Dismiss brought by Los Angeles Unified School District is granted, and the Request for Mediation and Due Process Hearing in this matter is dismissed.

It is so ordered.

Dated: March 25, 2009

/s/

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