

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEAN VIEW ELEMENTARY SCHOOL
DISTRICT.

OAH CASE NO. 2011080856

ORDER DENYING MOTION TO
DISMISS

On August 22, 2011, Student filed a Due Process Hearing Request (complaint), naming District as the respondent. On August 31, 2011, District filed a Notice of Insufficiency (NOI) and a Motion to partially dismiss issues in Student’s complaint. Also on August 31, 2011, Student’s attorney filed a request for an extension to respond to the Motion to Dismiss until September 8, 2011. On September 6, 2011 OAH issued an Order on District’s NOI. Student did not file an opposition to the Motion to Dismiss.

APPLICABLE LAW AND DISCUSSION

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*].)

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.

District’s motion to dismiss seeks dismissal of Issue 9, “as well as any and all issues that arose on or before August 31, 2011.” District argues that Issue 9 involves allegations that District failed to offer Student extended school year in his June 9, 2011 and July 7, 2011 independent education plans (IEP). District speculates that this allegation may have applied to the 2011 ESY, and argues that a 2010 Settlement Agreement between Student and District bars any claims against District relating to its obligations under the IDEA through August 31, 2011. District attached an authenticated copy of the Settlement Agreement to its motion. Paragraph 2 states: “The Parties acknowledge that the Agreement shall cover the District’s

educational obligations to the Student from the date of this Agreement through August 31, 2011.” Paragraph 9 is a release and waiver of all claims through August 31, 2011.

District’s argument is now moot because Issue 9 was deemed insufficiently pled by OAH’s NOI order of September 6, 2011. Student was granted leave to amend. Therefore, District’s motion as to Issue 9 must be denied without prejudice.

District also request that “all issues that arose on or before August 31, 2011” be dismissed. District’ request is ambiguous and does not identify which specific issues or portions of the issues it contends are covered by the August 31, 2010 settlement agreement. In addition, the September 6, 2011 NOI Order found Issues 4, 6, and 10 insufficient and granted leave to amend. Therefore, District motion as to “all issues that arose before August 31, 2011” must be denied without prejudice. If District elects to re-file its motion, either if Student amends the complaint, or does not, then it should specify exactly which issues it seeks to dismiss and on what grounds.

ORDER

1. District’s motion to dismiss Issue 9 and “all issues that arose on or before August 31, 2011” is denied without prejudice to being re-filed.
2. If District elects to re-file its motion, it shall include specific issues and/or allegations and the specific reasons why each of those issues and/or allegations are barred by the August 2010 Settlement Agreement.
3. The matter shall proceed to hearing as ordered in the September 6, 2011 NOI order.

Dated: September 12, 2011

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings