

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SWEETWATER UNION HIGH SCHOOL
DISTRICT AND CORONADO UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2012050894

ORDER GRANTING CORONADO
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS

On May 22, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing. On June 8, 2012, Student filed an amended Request for Due Process Hearing (complaint).¹ Student's complaint named the Sweetwater Union High School District (SUHSD), the Coronado Unified School District (CUSD) and Ronald Lopez as respondents.² On June 22, 2012, the CUSD filed a motion to dismiss, or in the alternative a Notice of Insufficiency (NOI) for this matter. Also on June 22, 2012, the SUHSD filed a NOI as to Student's complaint.

On June 25, 2012, OAH determined that the complaint had been insufficiently pled and granted the respondents' NOIs'. OAH also determined that CUSD's motion to dismiss was moot because Student's complaint had been insufficiently pled and because OAH had granted respondents' NOIs'. OAH ordered that Student had 14 days to file an amended complaint or this matter would be dismissed.

On June 25, 2012, Student filed a second amended complaint (SAC). Student's second amended complaint was not addressed by OAH's June 25, 2012 Order which found only that Student's complaint was insufficient. The SAC contains two claims. Neither the CUSD nor the SUHSD filed an opposition to Student's second amended complaint. On July 2, 2012, OAH issued an order granting leave to file the SAC.

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² Student's second amended complaint names only the SUHSD and CUSD as respondents.

July 10, 2012, CUSD filed a motion to dismiss on grounds that OAH lacks jurisdiction to hear Student's claims against it. In the alternative, CUSD also filed a NOI. OAH has not received a response from Student.

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.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541 the United States District Court for the Northern District of California 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.

DISCUSSION

Student raises two claims against CUSD, one under the IDEA and the second under the corresponding state law in the SAC.³ Student alleges that the parties had reached a settlement in a prior OAH case (OAH Case Number 2010080734) which required CUSD to pay for prospective educational services. (SAC, p. 8.) Student contends that he requested that "disbursement of funds pursuant to the settlement agreement." (SAC, p. 9-10.) In

³ In Claim Two, Student incorporates by reference the allegations in the first claim.

Paragraph 83, Student alleges that “CUSD breached the settlement agreement by unreasonably and in bad faith refusing to disburse funds as agreed in the settlement agreement.” (SAC, p. 10.) Pages 11 and 12 of the SCA contain a section entitled “Prayer for Relief.” Student seeks an award by OAH of special damages, compensatory damages and punitive damages. Student is seeking monetary damages for CUSD’s alleged breach of contract. Thus, as discussed above, OAH is without jurisdiction over the claims against CUSD.

Since OAH lacks jurisdiction over the SAC, CUSD’s NOI is moot.

ORDER

The Motion to Dismiss by CUSD is granted. CUSD is dismissed as a party in the above-entitled matter. The matter will proceed as scheduled against the remaining party.

IT IS SO ORDERED.

Dated: July 11, 2012

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings