

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL  
DISTRICT, SYNERGY KINETIC  
ACADEMY, AND SYNERGY  
ACADEMIES.

OAH CASE NO. 2012101168

ORDER GRANTING RESPONDENTS'  
MOTIONS TO DISMISS COMPLAINT  
FOR LACK OF JURISDICTION

Student filed a Request for Due Process Hearing (Complaint) with OAH on October 30, 2012 naming Los Angeles Unified School District (District); Synergy Kinetic Academy, and Synergy Academies (collectively called Charter School) as respondents.

On November 14 and 15, 2012, District and Charter School respectively filed motions to dismiss Student's complaint. All respondents contend the complaint should be dismissed because (1) the complaint solely alleges claims for violations of Section 504 of the Rehabilitation Act of 1093 (29 U.S.C. 701), et seq., and OAH lacks jurisdiction to hear the matters asserted in the complaint; and (2) the complaint is barred by the two-year statute of limitations. District raises an additional ground for dismissal arguing that the issues raised in the complaint have been resolved through a previous Final Settlement and Release Agreement with a waiver of all claims that was fully executed on June 24, 2011.

As set forth below the motions are granted and Student's complaint is dismissed.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child;

or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].)

The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) 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.

#### *Statute of Limitations*

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

## DISCUSSION

### *Section 504*

The complaint contains extensive background information establishing a series of events leading up to Student's injuries which caused her to sustain a traumatic brain injury (TBI) on September 5, 2009, and parents attempts to obtain special education services from

that time period to July 2010. The complaint also states the parties filed a complaint which resulted in a settlement agreement on June 24, 2011. The complaint alleges two causes of action or problems. Both problems allege the respondents discriminated against Student on the basis of her disability, and denied her benefits for the entire period from 2009 to and including 2011-2012 school year in violation of Student's rights under Section 504 and various unnamed state laws. Nowhere in the complaint does Student allege respondents denied her a Free Appropriate Public Education (FAPE). The complaint further requests damages for emotional distress, loss of earnings, costs and injunctive relief which are not available under the IDEA. OAH does not have jurisdiction to entertain claims based on Section 504. Accordingly, the complaint is dismissed.

### *Settlement Agreement*

District, in its Motion to Dismiss, requests dismissal of the complaint because Student released all claims against the respondents as of June 24, 2011. Although a copy of the settlement agreement is not attached to District's Motion to Dismiss, Student acknowledges in his complaint that the parties "settled claims based upon the IDEA in a final settlement agreement" on the aforementioned date, and nowhere does Student allege any claims that were unresolved in the settlement agreement that have resulted in a denial of FAPE. Accordingly, as discussed above, OAH lacks jurisdiction to entertain these claims and the complaint is dismissed.

### *Statute of Limitations*

Here, had Student's complaint raised issues within OAH's jurisdiction the two-year statute would bar any claim prior to October 29, 2010 unless Student established an exception to the statute. However, based upon the foregoing law and discussion the complaint raises claims which, on their face, fall outside of OAH's jurisdiction. Therefore the complaint in its entirety is dismissed.

### ORDER

1. District's and Charter Schools' Motions to Dismiss are granted.
2. Student's complaint is dismissed

Dated: November 15, 2012

/s/

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STELLA OWENS-MURRELL  
Administrative Law Judge  
Office of Administrative Hearings