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. 2013071241 ORDER GRANTING MOTION TO DISMISS SYNERGY KINETIC ACADEMY AND SYNERGY ACADEMIES

On July 26, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (complaint), naming the Los Angeles Unified School District (LAUSD), Synergy Kinetic Academy and Synergy Academies[1] as respondents. In the complaint, Student alleges that the respondents (1) failed to provide Student with a free appropriate public education (FAPE) during school years 2011-2012 and 2012-2013 when they failed to provide Student with occupational therapy (OT) services pursuant to a June 2011 settlement agreement which settled OAH case number 2011020588 (June 2011 Settlement agreement); (2) failed to convene an Individualized Education Program (IEP) meeting during school year 2012-2013; and (3) breached the June 2011 settlement agreement.

On August 22, 2013, Synergy filed a Motion to Dismiss. OAH has not received a response from Student nor LAUSD. Synergy contends that OAH lacks jurisdiction to hear breach of contract claims. Synergy also contends that it is not responsible for providing OT and conducting a 2012-2013 IEP meeting as the terms of the June 2011 settlement agreement places LAUSD as responsible for these. Also, Student was not enrolled at Synergy following August 2009.

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,

[1] Synergy Kinetic Academy is a charter school, chartered by LAUSD, operated by Synergy Academies. Synergy Kinetic Academy and Synergy Academies will be hereafter referred to collectively as "Synergy."

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

Synergy, in its Motion to Dismiss, a request that Student's Complaint be dismissed because Student released all claims against it as of the date of the fully executed June 2011 Agreement. A copy of the settlement agreement is attached to Student's District's Motion for Stay Put which was filed simultaneously with her complaint.[2] Student's issues are all based on the June 2011 settlement agreement.

The June 2011 agreement requires LAUSD and Synergy to reimburse Student for educational expenses incurred following a drowning incident in August 2009 which severely injured Student plus reimbursement of attorney fees in OAH case number 2011060588.. Both LAUSD and Synergy also agreed to be responsible to pay up to $36, 000 per year towards tuition at Fusion, a private school, plus another $3,600 for transportation for two school years. Additionally, LAUSD agreed to provide Student with OT, counseling services, and speech-language therapy services for school years 2011-2012 and 2012-2013. The

[2] Student incorporates the June 2011 settlement by reference in her complaint.

District also agreed to convene an annual IEP meeting no later than February 17, 2013 and to provide Student with an assessment plan no later than March 1, 2013.

Student's third issue is for breach of contract is outside OAH's jurisdiction. (*Pedraza v. Alameda Unified Sch. Dist, op. cit.)*

The June 2011 settlement agreement clearly exempts Synergy from being responsible for only sharing in the cost for the two year placement at Fusion and attorney fees. The June 2011 settlement agreement clearly requires only LAUSD to be responsible for providing to Student OT, speech-language and counseling services. Thus, Student has failed to allege a claim against Synergy under issues one and two.

Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain issue three. Additionally, the plain language of the settlement agreement resolves issues one and two of Student's Complaint in this case in that Synergy is not required to provide services to Student..

ORDER

Synergy's motion is granted. Synergy Kinetic Academy and Synergy Academies are hereby dismissed with prejudice as parties.

IT IS SO ORDERED.

Dated: August 28, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings