

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WEST COVINA UNIFIED SCHOOL
DISTRICT & CALIFORNIA VIRTUAL
ACADEMIES.

OAH CASE NO. 2013090110

ORDER GRANTING MOTION TO
DISMISS CALIFORNIA VIRTUAL
ACADEMIES

On September 3, 2013, Student filed a due process complaint (Complaint) against West Covina Unified School District (District) and California Virtual Academies (CAVA). On December 27, 2013, CAVA filed a motion to dismiss (Motion) the Complaint. On January 2, 2014, Student filed an opposition to the Motion.

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 (FAPE) 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*].) 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 FAPE as a result of a violation of a mediated settlement agreement, as opposed to “merely a breach” of the

settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION

Student raises the following four claims against CAVA and District in his Complaint: (1) Student seeks to renegotiate the September 28, 2011 settlement agreement (Settlement Agreement) stating that the stipulations therein were unfair and inequitable; (2) Student complains of a FAPE denial from 2009-2011 because the amount of compensatory private tutoring services in the Settlement Agreement, calculated based upon private tutoring rates of 45 to 65 dollars per hour, were insufficient to help Student meet grade level standards; (3) Student complains that his attorney in 2011 and CAVA failed to consider an independent educational evaluation in determining appropriate services for Student in the 2011 matter which was the subject of the Settlement Agreement; and (4) Student was forced to withdraw from school and suffered loss of education in exchange for services agreed to in the Settlement Agreement. All of Student's claims relate to his displeasure with the terms of the Settlement Agreement.

CAVA's Motion requests that the Complaint be dismissed because OAH has no jurisdiction to hear claims identified in the Complaint because they all relate to implementation of the Settlement Agreement. A copy of the Settlement Agreement is attached to the Motion.

OAH finds that all of Student's claims seek reformation of various terms of the Settlement Agreement based on principles of fairness and equity. OAH has no jurisdiction to hear matters that seek to invalidate or rewrite the terms of the Settlement Agreement. Further, to the extent Student seeks redress for a FAPE denial from 2009-2011, such claims are also not within OAH's jurisdiction because, in the Settlement Agreement, Student agreed that the compensatory education offered therein did not constitute a FAPE and Student waived the right to maintain any proceeding "arising from or related to Student's education program through December 22, 2011."¹ According to the terms of the Settlement Agreement, Student withdrew enrollment from CAVA on December 22, 2011 rendering any issues of placement, services and provision of FAPE after December 22, 2011 moot with respect to CAVA. None of this is disputed in Student's opposition.

Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain these claims. Specifically, Student's complaint seeks to rescind and renegotiate the settlement agreement, a matter squarely outside of OAH jurisdiction. To the extent Student can be said to be alleging a denial of a FAPE prior to December 22, 2011, Student does not dispute that the plain language of the Settlement Agreement waived any such claims. Accordingly, OAH is without jurisdiction to entertain such claims against CAVA.

¹ See page 3, lines 3-4, of the Settlement Agreement.

ORDER

1. CAVA's Motion to be dismissed as a party is granted.
2. All dates remain on calendar as to West Covina Unified School District.

Dated: January 6, 2014

/s/

SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings