

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON  
BEHALF OF STUDENT,

v.

BEAUMONT UNIFIED SCHOOL  
DISTRICT, CHINO VALLEY UNIFIED  
SCHOOL DISTRICT, AND ROWLAND  
UNIFIED SCHOOL DISTRICT.

OAH Case No. 2016040931

ORDER GRANTING BASSETT  
UNIFIED SCHOOL DISTRICT'S  
REQUEST FOR DISMISSAL  
WITHOUT PREJUDICE

PROCEDURAL HISTORY

Student filed a request for due process hearing on April 15, 2016, naming the Beaumont Unified School District, the Chino Valley Unified School District, the Bassett Unified School District, and the Rowland Unified School District. In synthesis, Student alleges that the four school districts denied him a free appropriate public education during the 2015-2016 school year by breaching a September 5, 2015 settlement agreement between him and the four districts. Student alleges that the districts failed to provide him with an independent education evaluation and an individualized education program team meeting to discuss the recommendations from the independent evaluation as required by the parties' settlement agreement.

On April 20, 2016, Bassett filed a request to be dismissed as a party. Bassett contends that it was never required to provide Student with an independent evaluation under the terms of the agreement. Bassett also contends it was not required to convene an IEP team meeting to discuss the evaluation. Therefore, Bassett contends that it is not a proper party to this action.

Neither Student nor any of the other three school districts have filed a response to Bassett's request for dismissal.

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. (*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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court 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 AND ANALYSIS

Student's complaint alleges that he entered into a settlement agreement with all four named school districts on September 5, 2015. He contends that the districts agreed to fund his placement at a non-public school for the 2015-2016 school year. He also contends the districts agreed to fund a comprehensive independent evaluation for him for the purpose of determining his appropriate placement and services for the 2016-2017 school year. Student states that specific independent assessors were identified to conduct the independent evaluation. He also states that the settlement contained a contingency clause that provided for the parties to mutually select alternative assessors if the originally designated ones were unable or unwilling to complete the independent evaluation in a timely manner. Student contends that the original assessors did not complete the assessment. Student contends that as of the date of the filing of his request for due process, some seven months after the settlement was executed, he still has not received the independent evaluation or had an IEP team meeting to discuss his program for the next school year. Student alleges he has been denied a FAPE by the districts' failure to comply with the settlement agreement.

In its request for dismissal, Bassett contends that it had no responsibility under the settlement agreement to fund the independent evaluation at issue in Student's present request

for due process. Student did not attach a copy of the settlement agreement to his filing, but Bassett, in its motion, attached a copy of what it asserts is the pertinent page of the agreement. That page indicates that it was Chino Valley, as well as the West End Special Education Local Plan Area, that agreed to fund the independent evaluation. The settlement further indicates that it was Chino Valley and West End that agreed to contract directly with the designated assessors. The paragraph of the settlement addressing funding of the independent evaluation does not place responsibility for the funding or for contracting with the assessors with Bassett.

Student has not filed an opposition to Bassett's motion to dismiss and therefore has not contested Bassett's assertion that it was not responsible for funding the independent evaluation or contracting with the assessors.

The only issue alleged by Student in his complaint is a denial of FAPE based upon a failure to complete the independent assessment. Because the settlement agreement does not place any obligation on Bassett to fund the independent evaluation or contract with the assessors, there are no allegations in Student's request for due process that apply to Bassett. Bassett is therefore not a proper party to this case as it is presently plead. Bassett's request for dismissal is granted, without prejudice.

#### ORDER

Bassett's request to be dismissed as a party to this action is granted, without prejudice. This case shall proceed as to Beaumont Unified School District, Chino Valley Unified School District, and Rowland Unified School District.

DATE: April 26, 2016

DocuSigned by:

*Darrell Lepkowsky*

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings