

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT AND ROWLAND UNIFIED
SCHOOL DISTRICT.

OAH Case No. 2016040931

ORDER GRANTING ROWLAND
UNIFIED SCHOOL DISTRICT'S
MOTION TO DISMISS 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 27, 2016, Rowland filed a request to be dismissed as a party. Rowland contends that it was never required to provide Student with an independent evaluation under the terms of the agreement. Rowland also contends it was not required to convene an IEP team meeting to discuss the evaluation. Rowland states that its only obligation was to fund a portion of the attorney's fees required by agreement. Rowland points out that there is no allegation in Student's instant complaint that it has failed to meet its obligations under the settlement or that it was required to provide Student with a FAPE and has failed to do so. Therefore, Rowland contends that it is not a proper party to this action.¹

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

¹ OAH dismissed Bassett and Beaumont as parties to this case in previously issued orders.

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, Rowland 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. Rowland contends that its only responsibility was to fund a portion of the attorney's fees due to Student's attorney as part of the agreement, which Rowland contends has been met. Rowland provided the declaration of one of its attorneys in support of its position that it has paid the attorney's fees and that Student's attorney has cashed the checks for the fees.

Student did not attach a copy of the settlement agreement to his filing, but Rowland, 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 what appears to be the West End Special Education Local Plan Area,² 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 Rowland.

Student has not filed an opposition to Rowland's motion to dismiss and therefore has not contested Rowland'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 Rowland to fund the independent evaluation or contract with the assessors, there are no allegations in Student's request for due process that apply to Rowland. If Rowland had no responsibility for contracting with the assessors or funding the independent evaluation, it cannot have denied Student a FAPE by the alleged failure to comply with that provision of the settlement. Rowland is therefore not a proper party to this case as it is presently plead. Rowland's request for dismissal is granted, without prejudice.

² The West End Special Education Local Plan Area was not a named respondent in the case giving rise to the settlement agreement and was not named as a respondent in the instant case.

ORDER

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

DATE: May 3, 2016

DocuSigned by:

Darrell Lepkowsky

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings