

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 BEAUMONT
UNIFIED SCHOOL DISTRICT'S
REQUEST FOR DISMISSAL
WITHOUT PREJUDICE

PROCEDURAL HISTORY

Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings on April 15, 2016, naming the Beaumont Unified School District, 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 educational 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, Beaumont filed a request to be dismissed as a party.¹ Beaumont contends that it was never required to provide Student with an independent evaluation under the terms of the agreement or to contract with the independent assessors, and therefore, it is not a proper party to the instant due process action. Beaumont contends that it has met all of the obligations required of it under the parties' settlement agreement. Finally, Beaumont contends that Student's allegations of failure to comply with the settlement agreement do not implicate any of its FAPE obligations to Student because the agreement specifically states that its terms are compromises between the parties and do not constitute a FAPE for Student.

¹ Bassett filed a motion to be dismissed as a party, which OAH granted in an order issued April 26, 2016.

Student filed an opposition to Beaumont's motion to dismiss on April 28, 2016. Student did not specifically address the bases of Beaumont's motion in his opposition. Beaumont filed a response to Student's opposition on April 28, 2016. On April 29, 2016, Student filed a reply to Beaumont's response, which again does not specifically address the fact that Beaumont was not required under the terms of the settlement to either fund the independent evaluation or contract with the evaluators.

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, Beaumont 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 Beaumont, in its motion, attached a complete copy of the agreement. The agreement indicates that Beaumont agreed to fund Student's placement at a non-public school for the 2015-2016 school year. Student's instant complaint does not allege that Beaumont has failed to comply with its obligation to fund the placement. The agreement also states that Beaumont agreed to convene an IEP team meeting for Student prior to the end of the school year to discuss Student's progress and to determine a placement for the 2016-2017 school year. Student's present complaint does not allege that Beaumont has failed to convene an IEP team meeting once the independent assessment was completed.

Paragraph two of the settlement agreement is the part in contention in Student's instant complaint. Paragraph two of the agreement states that Chino Valley and the "WESELPA" (which appears to stand for West End Special Education Plan Area, an entity never named in Student's earlier complaint and not named in the instant complaint) agreed to fund an independent evaluation for Student in an amount not to exceed \$4,500. This paragraph continues by stating that Chino Valley and West End agreed to contract directly with the assessors chosen by all parties to the settlement agreement. Neither this paragraph nor any other clause in the settlement agreement places any obligation on Beaumont or any school district other than Chino Valley to fund the independent evaluation at issue or to contract with the assessors.

Many of the facts stated in the parties' respective pleadings concerning Beaumont's motion to dismiss relate to matters that are not referenced in Student's complaint and/or which occurred after the filing of the complaint. Those statements and facts are not proper matters to be raised in a motion to dismiss for they create material questions of fact disputed between the parties that can only be resolved at hearing. For example, Beaumont contends that the independent evaluation that is the basis of the allegations in Student's complaint has, in fact, been completed, but that it has never been provided with a copy of the evaluation report. Student responds that the evaluation was untimely, and that he never had an obligation to provide a copy of the report to Beaumont. None of this information is

referenced in Student's complaint, and none of it has any relevance to whether Beaumont is a proper party for purposes of the specific allegations made in Student's complaint.

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 Beaumont to fund the independent evaluation or contract with the assessors, Beaumont cannot be found to have breached the agreement. This is true even assuming that the breach alleged by Student occurred, and even assuming that this allegation, if true, amounted to a denial of FAPE. Beaumont is therefore not a proper party to this case as it is presently plead. Beaumont's request for dismissal is granted, without prejudice.

ORDER

Beaumont'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 and Rowland Unified School District.²

DATE: May 2, 2016

DocuSigned by:

Darrell Lepkowsky

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings

² Chino Valley and Rowland have filed their own respective motions to dismiss, which will be addressed in future orders.