

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010061143

ORDER GRANTING MOTION TO
DISMISS

On June 28, 2010, Student's father on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming San Francisco Unified School District (District) as the respondent.

On August 25, 2010, the District filed a Motion to Dismiss Student's complaint.

OAH has not received a response from Student or her father.

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 (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. The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.)

A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner, supra*, 223 F.3d at pp. 1028-1029.)

Prior to October 9, 2006, the statute of limitations for due process complaints in California was generally three years prior to the date of filing the request for due process. The statute of limitations in California was amended, effective October 9, 2006, and is now two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency’s withholding of information from the parent that was required to be provided to the parent.

Education Code section 56041.5 provides that when an individual with exceptional needs reaches the age of 18, with the exception of an individual who has been determined to be incompetent under state law, the local educational agency shall provide any notice of procedural safeguards required by this part to both the individual and the parents of the individual. All other rights accorded to a parent under this part shall transfer to the individual with exceptional needs.

DISCUSSION

Student’s father raises three claims against the District in his Complaint, as follows:

1. Student alleges that the District failed to reimburse Student for speech and language services as agreed pursuant to a Settlement Agreement, dated August 31, 2006, for which Student is requesting reimbursement.

As indicated above, OAH has limited jurisdiction which does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. Further, Student has not alleged sufficient facts to support a claim alleging denial of a FAPE as a result of a violation of a mediated settlement agreement. In this matter, Student has alleged the District has failed to reimburse the sum of \$3750.00 pursuant to the terms of the Settlement Agreement. As such, it does not allege or rise to the level of a denial of FAPE as a result of the breach of agreement.

Additionally, Student's Settlement Agreement was executed on August 31, 2006. Pursuant to both federal and state law, the Settlement Agreement and alleged violations attributed to that agreement are beyond the two year statute of limitations. Student has presented no factual basis to support an exception to the two year statute of limitations pursuant to Education Code, section 56505, subsection (f).

2. Student alleges that the District failed to waive the math portion of the California High School Exit Examination (CAHSEE) for Student. Student is requesting the District be ordered to waive the CASHEE requirements. Again, the jurisdiction of OAH is limited in scope and does not extend to disputes regarding the CAHSEE.

3. Student contends that she has been denied her diploma, and is still a special education pupil, therefore, the District should fund \$75,000.00 in compensatory education to a trade school of Student's choice. Student has requested an award of compensatory education without stating a cause of action. In order to obtain relief in the form of compensatory education, Student must indicate (1) the reason she is requesting the relief; (2) the legal basis for her request; and (3) the fact which support her request. Student's complaint does not provide sufficient information to support her request for compensatory education.

4. Additionally, as indicated by the District, Student is now 20 years of age. Her father has not provided any information to indicate Student is under a conservatorship, or that he has obtained educational rights from Student. Therefore, Student, as an adult, must file any due process complaint on her own behalf. Her father does not have standing to initiate a complaint on her behalf at this time.

Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain these claims.

ORDER

The District's Motion to Dismiss OAH Case No. 2010061143 is granted without prejudice.

Dated: September 02, 2010

/s/

JUDITH PASEWARK
Administrative Law Judge
Office of Administrative Hearings