

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

OCEAN VIEW SCHOOL DISTRICT;
WEST ORANGE COUNTY
CONSORTIUM FOR SPECIAL
EDUCATION.

OAH CASE NO. 2011110468

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On November 14, 2011, Student’s parents on behalf of Student (collectively referred to as Student) filed a request for a due process hearing (complaint), naming the Ocean View School District and the West Orange County Consortium for Special Education (collectively referred to as District). On December 2, 2011, Student filed an amended request for due process hearing (amended complaint).

On December 12, 2011, the District filed a motion to dismiss the amended complaint. On December 14, 2011, Student filed an opposition to that motion. On December 16, 2011, the District filed a reply.

The District seeks to dismiss portions of Student’s case on three grounds: 1) that settlement agreements between the parties resolved the parties’ disputes which arose prior to June 2011; 2) that the statute of limitations cuts off any claims which arose more than two years prior to the filing of the complaint; and 3) that Student now attends school in another school district.

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*].)

OAH does not have jurisdiction over claims alleging a school district’s failure to comply with a settlement agreement. (*Wyner, supra*, 223 F.3d. at p. 1030.) If a parent

believes that a school district has violated a settlement agreement, the proper avenue for enforcement is the California Department of Education's compliance complaint procedure. (*Ibid.*) Recently a court recognized an exception to the *Wyner* rule when a parent alleged a denial of a free appropriate public education (FAPE) as a result of a violation of a settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement. (*Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541.)

OAH's limited jurisdiction also does not include an action to declare a settlement agreement between a parent and a school district null and void. (See *Student v. Los Angeles Unified School District* (2011) OAH Case number 2011070768; *Student v. Capistrano Unified School District* (2011) OAH Case number 2011030418.) When a party files a due process case based on claims that were waived as part of a settlement agreement, OAH will dismiss the case. (See, e.g., *Student v. Los Angeles Unified School District*, (2011) OAH case number 2011091067; *Capistrano Unified School District v. Student* (2011) OAH case number 2011060748.)

OAH does not have jurisdiction to entertain claims based on section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), section 1983 of title 42 of the United States Code, the Family Education Rights and Privacy Act (FERPA), No Child Left Behind, and similar statutes.

DISCUSSION

The District contends that much of Student's amended complaint must be dismissed because the parties entered into settlement agreements in which they mutually waived claims. Student's amended complaint recognizes that these agreements exist but argues that the waiver language contained in the settlement agreements is unconscionable and should be declared void.

The District relies on the declaration of Robyn Moses, which authenticates copies of settlement agreements signed by the parties in May 2008, August 2009, and September/October 2010. The agreement the parties signed in May 2008 contained the following clause:

Waiver of Free Appropriate Public Education

In consideration of the agreements contained herein, the Parties agree that they will not file a due process request with the California Office of Administrative Hearings regarding the identification, assessment, evaluation, educational placement, educational services, and/or provision of a Free Appropriate Public Education (FAPE) for [Student] including any and all issues regarding procedural requirements of the IDEA and analogous California law, from March 20, 2008 through March 19, 2009, including the 2008 Extended School

Year, unless the Student suffers from a catastrophic change in circumstances and a dispute arises with respect to such issues.

The agreement signed in August 2009 contained similar language, except the dates of the waiver were changed, so that it waived claims “from March 20, 2009 through June 22, 2010, including the 2009 Extended School Year, unless the Student suffers from a catastrophic change in circumstances and a dispute arises with respect to such issues.”

The agreement signed in September and October 2010 noted that the parties were resolving disputes through June 21, 2011, and contained similar waiver language. The waiver language in that agreement stated that it waived claims from “June 9, 2010 through June 21, 2010, including the 2010 Extended School Year, unless the Student suffers from a catastrophic change in circumstances and a dispute arises with respect to such issues.”

In its moving papers, the District contends that the date of June 21, 2010, in the September/October 2010 settlement agreement should have read 2011, and that the 2010 date was a typographical error. Student’s amended complaint states the agreement was “poorly written and inconsistent in its terms,” but Student’s opposition papers do not dispute that the agreement waived claims through June 2011. Since the agreement was signed *after* June 2010 and the parties had already waived claims up to June 2010 the previous year, the District is clearly correct in its contention regarding the correct date for the waiver language.

In Student’s amended complaint and opposition papers to the District’s motion, Student does not dispute that the settlement agreements were signed or that the waiver language would bar portions of the current due process case. Instead, relying upon California probate law, California family law, and the California Civil Code, Student contends that the waiver language in the settlement agreements should be declared unconscionable and void. Student believes that Student should be permitted to proceed with a special education due process case against the District based on claims that arose during the period covered by the waiver clauses.

However, OAH does not have jurisdiction to adjudicate an action to void a provision of a contract. If Student seeks to invalidate all or part of the settlement agreements signed by Student’s parents, Student must seek relief in a different forum.¹

Student relies on the case of *Y.G. v. Riverside Unified School District* (C.D.Cal. 2011) 774 F.Supp.2d 1055, but that case does not support Student’s position. In that case, the federal court denied a motion to dismiss a student’s federal

¹ In his opposition papers, Student candidly admits that many of Student’s claims in the amended complaint are outside the jurisdiction of OAH. Student explains that he raises those claims in his amended complaint in order to be certain that administrative remedies are exhausted before proceeding elsewhere.

case in which a student was, in part, challenging the waiver language in a settlement agreement. However, OAH had already dismissed the underlying administrative due process matter based on lack of jurisdiction. The federal court did overturn OAH's jurisdictional decision, and instead found that the student had exhausted administrative remedies. Nothing in that case indicates that OAH has jurisdiction over contractual disputes or disputes in which a student seeks to have a settlement agreement declared unconscionable and void.

The District's motion to dismiss is appropriately granted as to any claims which arose on or before June 21, 2011. The settlement agreements of the parties contained waiver language specifically barring the filing of a due process case for any claims which arose between March 20, 2008, and that date. Any attempt by Student to have those agreements or any term of those agreements declared null and void is beyond the jurisdiction of OAH to adjudicate.

Because the motion to dismiss is granted based on the waiver language in the settlement agreements, there is no need to address the statute of limitations issue. It does not appear that Student alleged any claims that arose prior to the time period covered by the waivers in the settlement agreements.

It is also appropriate to dismiss Student's claims regarding a violation of section 504 of the Rehabilitation Act of 1973, section 1983 of title 42 of the United States Code, and No Child Left Behind, and any claims arising under California family law, California probate law, the California Civil Code, or any other federal or state discrimination laws. OAH has no jurisdiction to decide cases which arise under those provisions of law.

OAH also does not have jurisdiction to hear claims for violation of FERPA. However, in addition to the FERPA allegations, Student alleges a denial of IDEA based on the failure of the District to timely produce records – that allegation is sufficient to state a claim within the jurisdiction of OAH.

The District also seeks to dismiss Student's claims which arose after June 21, 2011, on the basis that Student is now attending school in a different school district. The District does not contend that Student's parents have moved outside of the District's jurisdictional boundaries. Student opposition to the motion to dismiss counters the District's arguments by arguing that Student's parents were forced to seek services from the other school district because of the District's denial of FAPE.

Education Code section 48200 provides that a child subject to compulsory full-time education shall attend public school in the school district in which the child's parent or legal guardian resides. The determination of residency under the IDEA or the Education Code is no different from the determination of residency in other types of cases. (*Union Sch. Dist. v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525.)

The District is essentially seeking summary judgment on the claims which arose after June 2011. OAH has jurisdiction over those claims, but the District argues that it should win those claims as a matter of law. Special education due process procedures do not permit motions for summary judgment. The District's motion to dismiss is denied to the extent that it involves any claims arising under IDEA which arose after June 21, 2011.

ORDER

The District's motion to dismiss is granted in part and denied in part, as follows:

1. To the extent that the amended complaint alleges claims which arose on or before June 21, 2011, those claims are dismissed.
2. To the extent that the amended complaint alleges claims based on section 504 of the Rehabilitation Act of 1973, section 1983 of title 42 of the United States Code, No Child Left Behind, FERPA, or any similar state or federal discrimination laws, and any claims arising under California family law, California probate law, or the California Civil Code, those claims are dismissed;
3. With respect to all other claims alleged in the amended complaint, the motion to dismiss is denied.
4. All mediation, prehearing conference and hearing dates in this matter remain on calendar as currently set.

IT IS SO ORDERED.

Dated: December 22, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings