

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011110690

ORDER GRANTING MOTION TO
DISMISS

On November 17, 2011, Student’s parent on behalf of Student (Student) filed a request for a due process hearing (complaint), naming Placentia-Yorba Linda Unified School District (District) as the respondent.

On November 28, 2011, the District filed a motion to dismiss Student’s complaint on the basis that it is barred by the terms of a settlement agreement and therefore the Office of Administrative Hearings (OAH) has no jurisdiction to hear this case. The District’s motion is supported by a declaration under penalty of perjury and an authenticated copy of the settlement agreement.

OAH has not received a response from Student to the motion.

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 (*Wyner*).)

This limited jurisdiction does not include jurisdiction over claims alleging a school district’s failure to comply with a settlement agreement. (*Wyner, supra*, 223 F.3d 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, however, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal. 2007) 2007 U.S. Dist. Lexis 26541; 2007 W.L. 949603 (*Pedraza*), the United States District Court for the Northern District of California indicated that when the student is alleging a denial of a free appropriate public education (FAPE) as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of FAPE. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education’s compliance complaint procedure.

Both state and federal special education laws favor settlements in due process cases. The IEP process is intended to be nonadversarial. (Ed. Code, § 56341.1, subd. (h).) When disputes about a child’s educational program arise, both federal and state law contain numerous mechanisms designed to assist parents and districts to settle their differences without need for an administrative hearing. When a due process hearing request is filed by a pupil’s parents, the law calls for an informal resolution session to assist the parties with settling their differences. (20 U.S.C. § 1415(f)(1)(B); Ed. Code, § 56501.5.) If the parties are unable to resolve the matter in resolution, there is a mediation process prior to the hearing. (20 U.S.C. § 1415(e); Ed. Code, §§ 56501, subd. (b)(2); 56503). Even after a due process hearing has begun, the parties are permitted to stop the proceeding to engage in mediation. (Ed. Code, § 56501, subd. (b)(2).)

California law also provides for mediation *before* a due process hearing request is filed. (Ed. Code, § 56500.3.) This type of mediation is intended to be an informal procedure, conducted without attorneys being present to negotiate the terms. (Ed. Code, § 56500.3, subd. (a).) Parties are also permitted to settle their differences even before this mediation session is held. (Ed. Code, § 56500.3, subd. (j)(1).)

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. Parent* (2011) OAH case number 2011060748.)

DISCUSSION

In Student’s previous due process case against the District, the parties signed a settlement agreement in August 2011, which provided for Student’s education for the upcoming school years. As part of the consideration for the settlement agreement, Student’s parents waived, among other things, their right to bring any due process hearing requests

alleging a denial of FAPE up through and including the date when Student reaches the age of majority in March 2012.

The agreement recited that “the Parties have settled any and all outstanding Disputes, agreed upon an educational placement and services for the 2011/2012 school year, and have agreed upon reimbursement of an educational program for Student for the 2012/13 and 2013/14 school years.”

The agreement contained extensive release language, including the following:

As further consideration for this Agreement, it is the express and understood intent, purpose, desire and agreement of the Parties that the Parties shall, and hereby do, release and forever discharge one another...of and from any and all educationally based claims, demands, actions or causes of action of every kind and character, known or unknown, which they may now have in connection with or arising out of the Student’s education through June 30, 2014. Included specifically, without limitation, in this release are (1) a release of any obligation by the District to provide any educational services, or reimbursement for any educational services or assessments through June 30, 2014, other than those expressly set forth herein; (2) a release of any claim for compensatory education that may exist to date or that may arise as a result of the Student’s educational placement through June 30, 2014; (3) a release of any claim for attorneys’ fees which the Student may have incurred in conjunction with the Disputes or the Agreement, except to the extent the District has obligated itself to reimburse the Parents as set forth in paragraph 3 herein; and (4) a release of any procedural or substantive violation of IDEA or any other provision of educationally-based law, which may have occurred to date or which may occur as a result of this Agreement.

The settlement agreement also waived claims under Section 1542 of the California Civil Code.

Student filed a second complaint (the complaint in the instant case) on November 17, 2011. Student’s complaint alleges that the District has violated the terms of the settlement agreement in the prior case, that the District’s employees have retaliated against Student, and that the District’s manner of implementing (or failing to implement) the terms of the settlement agreement has denied Student a FAPE.

As decided in the *Wyner* case, OAH does not have jurisdiction to enforce a settlement agreement – instead, if a parent believes that a district is failing to comply with the terms of a settlement agreement, the parent needs to file a complaint with the California Department of Education.

The *Pedraza* exception to the *Wyner* rule does not apply in the instant case because Student’s parents specifically signed a settlement agreement waiving their rights to bring a

due process case based on a denial of FAPE related to the settlement agreement. With respect to the retaliation claims, OAH does not have jurisdiction to hear such matters except to the extent that they are related to allegations of denial of FAPE. (See *Parents on Behalf of Student v. Los Angeles Unified School District* (2011) OAH case number 2011030191.)

Student's due process case must be dismissed for lack of OAH jurisdiction. To the extent that Student's complaint alleges a violation of a FAPE, those claims were waived as part of the settlement agreement. To the extent that Student's complaint alleges a violation of the settlement agreement, OAH does not have jurisdiction – the proper forum for a ruling on whether the District is violating the settlement agreement is the California Department of Education.

ORDER

The District's motion is granted. OAH Case No. 2011110690 is hereby dismissed.

Dated: December 8, 2011

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings