

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND GREEN DOT PUBLIC
SCHOOLS.

OAH CASE NO. 2013040170

ORDER GRANTING MOTION TO
DISMISS GREEN DOT AS A PARTY

On April 23, 2013, respondent Green Dot Public Schools (Green Dot) filed a motion to dismiss it as a party, contending that Student’s claims against it are barred by a settlement agreement. On April 25, 2013, Student filed a non-opposition to the motion to dismiss.

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*].) 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.

DISCUSSION

Green Dot argues that Student’s complaint raises claims against it for an alleged failure to provide Student with a FAPE in the 2011-2012 school year, but that all educational claims for that academic year were released by Student pursuant to a settlement agreement dated June 1, 2012. The motion is not accompanied by a sworn declaration. An unauthenticated settlement agreement purporting to be between the Student and Los Angeles Unified School District (District), dated June 1, 2012, is attached to the motion. Green Dot is not a party to that document.

Student’s non-opposition notes that Green Dot is not a party to the June 1, 2012 settlement agreement, but states that Student has decided to pursue District only on the claims stated in the complaint.

District’s motion is not supported by admissible evidence. The proffered settlement agreement, were it admissible, clearly states that the Student and District released and discharged “each other” from delineated claims, and that agreement would not support dismissal of Green Dot as a party to this due process proceeding. However, in light of Student’s non-opposition to the motion, and Student’s stated intention to pursue his claims exclusively against District in this matter, the motion to dismiss Green Dot as a party is granted without prejudice.

IT IS SO ORDERED.

Dated: April 26, 2013

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings