

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013090089

ORDER PARTIALLY GRANTING  
DISTRICT'S MOTION TO DISMISS  
AND DENYING MOTION TO  
BIFURCATE

On January 2, 2014, District filed a motion seeking 1) dismissal of Student's issues 2, 3 and 4 to the extent they raise claims predating June 20, 2013, and 2) bifurcation of the issue of residency. District's motion was supported by a declaration under penalty of perjury from its attorney and an authenticated copy of a settlement agreement between District and Student's parents dated May 22, 2012. OAH did not receive a response from Student to the motion. For the reasons discussed below, the motion to dismiss is partially granted as to issue 2, and the motion to bifurcate is denied without prejudice.

*Motion to Dismiss*

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.

In his complaint, Student raises four issues. Issue 1 asserts that District failed to offer Student a free appropriate public education (FAPE) for the 2013-2014 school year. Issue 2 asserts that District failed to reimburse Student’s parents for one-to one aide support for Student during the 2012-2013 school year, which Student contends was required for his continued placement at New Vista school, his private placement. Issues 3 and 4 allege that District did not appropriately identify Student’s eligibility categories prior to June 20, 2013, for the purpose of identifying his educational program for the 2013-2014 school year. Student alleges that District conducted assessments between April 22, 2013 and June 18, 2013, and held an individualized education program on June 18, 2013. Student also alleges that District did not provide Parents a copy of the proposed individualized educational program (IEP) until June 21, 2013. Student’s complaint specifically acknowledges that the parties entered into a May 22, 2012 settlement agreement.

In his proposed resolutions, Student seeks reimbursement for all educational expenses through extended school year 2013; reimbursement for a one-to-one aide in the spring semester of 2013; an order finding Student eligible for special education under autism and specific learning disability; an order for compensatory services; and an order for placement at a non-public school.

District asserts that the May 22, 2012 settlement agreement barred all of Student’s claims against District through June 20, 2013. The settlement agreement stated in Paragraph 2A: “Except as set forth in this Paragraph and Paragraph 16 of this Agreement, Petitioners specifically waive any right or claim to any additional reimbursement for Compensatory Services provided to the Student through June 20, 2013.” Paragraph 2 provided for reimbursement for specific costs, to which Student was entitled upon compliance with the terms of that paragraph. Paragraph 16 required board approval of the agreement.

Paragraph 2B provides that District will reimbursement for Student’s private placement, and that Student shall be designated as a parentally-placed private school student through the 2012-2013 school year.

Paragraph 2C provides that District shall have “no further obligation to provide and/or fund any educational services to/for Student during the 2012/2013 regular school year” except as provided in Paragraph 4, which provides that District will assess Student in the spring of 2013 and schedule an individualized education program (IEP) team meeting no later than May 31, 2013 to develop a program for Student for the 2013-2014 school year.

Paragraph 6 consists of a full release of all claims, including but not limited to educational claims, through the end of the 2012-2013 school year, which is identified as June 20, 2013. Subsection B is a waiver of all unknown claims pursuant to Civil Code Section 1542.

In its motion to dismiss, District asserts that Student's Issues 2, 3 and 4 are barred by the terms of the May 22, 2012 settlement agreement and should be dismissed. As to Issue 2, District is correct. The complaint alleges that, in order for Student to remain at his private placement provided for in the settlement, Parents were required to provide a one-to-one aide during spring 2013, and they now seek reimbursement for that service from District. However, Paragraph 2 of the settlement agreement is explicitly clear that Parents waived all further and future claims for reimbursement for services through June 20, 2013. Further, Student is not alleging that District failed to comply with the settlement agreement thereby denying Student a FAPE. The plain language of the settlement agreement resolves the claim. Accordingly, pursuant to the authorities discussed above, OAH has no jurisdiction to entertain this claim. Issue 2 will be dismissed.

However, District's arguments pertaining to Issues 3 and 4 are not persuasive. The May 22, 2012 settlement agreement provides that District will assess Student and hold an IEP meeting to prepare an IEP for the 2013-2014 school year. Factual issues exist as to whether Student waived any rights he may have had against District with respect to any ensuing IEP relating to the 2013-2014 school year. Issues 3 and 4 require factual findings by the hearing judge, and Student is entitled to make a factual record as to these issues. Accordingly, District's motion to dismiss Issues 3 and 4 is denied.

### *Bifurcation*

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

Generally, OAH will bifurcate a hearing where the resolution of a threshold question will determine whether the remainder of a hearing will be necessary. For example, OAH has bifurcated specific legal issues such as the statute of limitations because a determination of that issue may reduce or eliminate issues and determine whether the remainder of the hearing will be necessary. Bifurcation limiting parties or issues furthers judicial economy.

Here, bifurcation relating to residency is more appropriately addressed by the hearing ALJ at the time of the prehearing conference at which time scheduling will be discussed. Therefore the motion to bifurcate is denied without prejudice to District's right to resubmit the motion to be heard at the prehearing conference.

**ORDER**

1. District's motion to dismiss Issue 2 of the complaint to the extent it raises claims against the District arising on or before June 20, 2013 is granted.

2. District's motion to dismiss Issues 3 and 4 of the complaint is denied. The matter will proceed to hearing on Issues 1, 3, and 4.

3. District's motion to bifurcate the issue of residency is denied without prejudice to District's right to resubmit the motion to be heard at the prehearing conference.

Dated: January 9, 2014

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings