

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEWPORT-MESA UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015030349

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS STUDENT'S
ISSUE ONE

On March 16, 2015, District filed a motion to dismiss Student's Issue One of the complaint. The motion is supported by a declaration under penalty of perjury and authenticated exhibits. Student filed an opposition on March 19, 2015. District filed a reply on March 20, 2015. District seeks dismissal on the basis that Issue One is barred by the terms of a final settlement agreement reached between the parties in February 2014, related to a prior due process complaint filed in OAH Case No. 2014010200. For the reasons discussed below, the motion is granted.

APPLICABLE LAW

Parents have the right under the Individuals with Disabilities Education Act 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).) The Office of Administrative Hearings has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

However, OAH's jurisdiction over IDEA claims has limitations. 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. However, OAH has no jurisdiction to enforce a settlement agreement where a complaint does not allege a violation of an agreement resulting in a denial of FAPE.

DISCUSSION

Student's Issue One is: Was Student's placement at Costa Mesa Middle/High School campus for the 2014/2015 school year, pursuant to his November 7, 2013 individualized education program, appropriate? District seeks to dismiss this issue as outside of OAH jurisdiction.

The parties negotiated and entered into a Final Settlement Agreement of OAH Case No. 2014010299, executed on February 18, 2014 and February 24, 2014. Both parties were represented by legal counsel, who signed the agreement approving form and content. The parties agreed to the following relevant terms:

1) The Agreement covered all of the District's educational obligations to Student through a triennial IEP meeting to be held after assessments were completed during the first semester of the 2014/2015 school year (Par. 2, Attachment B, Par. (B)(1).) The Agreement defined that period as the "Agreement End Date."

2) The parties mutually released and waived all claims in connection with or arising out of Student's education through the first day of Student's attendance in a District program for the 2014-2015 school year. They defined that period as the "Waiver End Period." They also agreed that Parent did not waive any claims that arose "after the Waiver End Date." (Par. 8(A).)

3) The parties agreed that Parent was "solely and exclusively responsible for all education needs of Student through the Agreement End Date" except for District's obligations identified in Attachment B, Par. A. Parent agreed to re-enroll Student at Costa Mesa Middle/High School before the start of the 2014-2015 school year (Attachment B, Par. A(i)).

4) Attachment B, Paragraph B, outlines the educational program and assessments that District was obligated to provide Student for the 2014-2015 school year until District made a new offer of FAPE at a triennial IEP meeting and Parent's consent was obtained (Par B(iii)).

5) Student's stay put was defined as the educational program District was obligated to provide at Paragraph B(iii).

District's argues that Issue One should be dismissed because Student has:

1) Waived all claims relating to his educational program, including the November 7, 2013 IEP, through September 2, 2014, the day on which Student enrolled at Costa Mesa Middle/High School; and

2) The parties negotiated and agreed to the terms of Student's placement and educational program for the 2014-2015 school year through the triennial IEP defined in

Attachment B, Paragraph B, thereby setting the terms of his educational program until his triennial IEP.

District contends that Parent removed Student from the agreed-upon placement after one day of enrollment, depriving District of the opportunity to provide the educational program agreed upon in the Agreement. District also contends that Parent's failure to fully comply with the terms of the Agreement by allowing District to provide the bargained-for educational program should not be the basis for allowing Student to now challenge his educational placement from and after September 2, 2014 until the Agreement End Date. For these reasons, District contends that Student's Issue One is barred by the terms of the Agreement and OAH has no jurisdiction over that claim. District's position is supported by the evidence and is persuasive.

Student contends that he has the right to challenge his placement any time after his first date of attendance at Costa Mesa Middle/High School on September 2, 2014 (the Waiver End Date). District concedes that Student has only waived claims through the Waiver End Date. However, District persuasively argues that, in addition to the express waiver language of the Agreement, the parties also specifically, and with advice of counsel, negotiated that Student would attend Costa Mesa Middle School "for the 7th grade," (Attachment B, Par. A(i)), and that Student's educational program through the Agreement End Date would be those services and supports itemized in Paragraph B of attachment B. (Attachment B, Par. A(i)) The Agreement also specifically provided that, other than the obligations stated in Paragraph B, Parent is "solely and exclusively responsible for all education needs of Student through the Agreement End Date." As a result, notwithstanding the Waiver End Date, Parent and Student have no claims against District for denial of FAPE, including challenging the appropriateness of placement through the Agreement End Date, unless Student contends that District denied him a FAPE by failing to implement the terms of the Agreement.

Student's argument that, because of the Waiver End Date, he can challenge placement as provided for in the Agreement and in the November 7, 2013 IEP, is not supported by any persuasive evidence or legal authority. Any challenges to the November 7, 2013 IEP, the terms of which were not identified in the complaint, were waived in the February 2014 Settlement Agreement when the parties released and waived all claims through the Waiver End Date.

Student's complaint does not allege that District failed to implement the terms of the Agreement. On the contrary, Parent declined to allow District to meet its obligations under the Agreement by removing Student from school after one day of the 2014-2015 school year. Effectively, Student is now attempting to unwind a settlement agreement that the parties negotiated.

In summary, the plain language of the Agreement waives all educational claims through the Waiver End Date, and determines Student's educational program through the triennial IEP team meeting (Agreement End Date). The parties are bound by the terms of the Agreement until the Agreement End Date. That Agreement serves as a substitute for the placement and services that would otherwise have been determined by an IEP team, and is therefore not enforceable by OAH, except under limited circumstances. Here, consistent with *Pedraza, supra*, OAH has no jurisdiction to entertain Student's Issue One, because Student is not alleging that District denied him a FAPE by failing to implement the terms of the Agreement. District's motion is granted.

ORDER

1. Issue One of Student's complaint is dismissed.
2. Student's complaint shall proceed to hearing on Issue Two, only.
3. All dates previously set are confirmed.

DATE: March 24, 2015

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings