

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMIES.

OAH Case No. 2016021035

ORDER GRANTING MOTION TO  
DISMISS

Student filed a request for due process with the Office of Administrative hearings on February 24, 2016, naming the California Virtual Academies at Los Angeles, a charter school also known as CAVA. Student raised three issues. In issue one, Student contends that CAVA is in violation of November 17, 2015 settlement agreement between the parties because CAVA has not provided Student with all of the education and related services mandated by the agreement. Student contends that CAVA's alleged failure to provide the services is a breach of the agreement and a violation of Student's right to a free appropriate public education under the Individuals with Disabilities Education Act. As a remedy, Student requests that OAH order CAVA to personally provide the agreed-to services.

In issue two, Student alleges that services mandated by the settlement agreement were delayed because CAVA did not timely provide Student's information to the non-public agency with whom CAVA had contracted to deliver the services under the settlement agreement. Student alleges this resulted in a delay in implementing the settlement from November 2015 to February 2016.<sup>1</sup> Student contends that CAVA will not be able to perform the terms of the settlement agreement within the time allotted. Therefore, as a remedy, Student requests OAH to extend the time frame for the provision of the services past that stated in the agreement.

In issue three, Student contends that at an OAH - held mediation in March 2015, CAVA agreed to allow Student to do four hours, 40 minutes a day of independent study while on Home Hospital pursuant to a doctor's note. Student contends that CAVA refused to supply those services. As a remedy, Student requests that CAVA be ordered to provide the Home Hospital services to which it had agreed.

On March 3, 2016, CAVA filed a motion to dismiss Student's complaint. CAVA contends that Student's complaint amounts to a request that OAH enforce the November 15,

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<sup>1</sup> Student inadvertently identified the year as February 2015 in her complaint.

2015 settlement agreement. CAVA asserts that Student's complaint is therefore beyond the jurisdiction of OAH.

Student filed an opposition to CAVA's motion on March 9, 2016.

### 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. (*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. (*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.)

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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that OAH has jurisdiction to adjudicate claims alleging denial of a FAPE 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.

There is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v.*

*Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted] (*Scott*.) The basic rationale of the ripeness doctrine is “to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

## DISCUSSION

CAVA contends that OAH does not have jurisdiction over the issues raised in Student’s complaint because it seeks to enforce a settlement agreement and because the issues are not ripe for adjudication.

Paragraph 5(D)(d) of the agreement gives Student until April 30, 2016, to utilize the compensatory services CAVA agreed to provide to her. This date is more than a month away from the date of this order, and over two months from the date Student filed her complaint. As stated in *Scott*, 306 F.3d at p. 662, issues are not ripe for hearing if based on future events that may or may not occur. In this case, Student’s issues one and two allege that CAVA has failed to provide services mandated by the settlement agreement. CAVA has until April 30, 2016, to provide the compensatory services it agreed to provide to Student. It is unknown at this point whether CAVA will not comply with the terms of the settlement. Student’s issues one and two are not yet ripe for adjudication.

Student’s issue three contends that CAVA agreed in March 2015 to provide Student with independent study programming through Home Hospital instruction pursuant to a doctor’s order. However, in paragraphs 3 and 6(A) through 6(E) of the settlement agreement, Student unambiguously agreed to waive all claims against CAVA up to the date the settlement was fully executed, which occurred on November 17, 2015, when Student’s mother signed the agreement. Therefore, any other claims concerning actions CAVA took or failed to take from March to November 2015, were waived in the settlement agreement. Student is not entitled to raise claims she waived.

Additionally, to the extent Student contends CAVA had a duty to provide her with independent study Home Hospital services from November 17, 2015, to the present, those claims too were waived by the settlement agreement. In paragraph 5(C) Student agreed to withdraw from CAVA as of the date of the agreement and not to re-enroll in CAVA at any future time. Student specifically and unambiguously agreed that CAVA had no obligation to provide her with any sort of educational program subsequent to November 17, 2015. By the terms of the settlement, Student waived any right to an educational program at CAVA. After November 17, 2015, CAVA no longer was Student’s local educational agency, and no longer had an obligation to provide any type of educational program to her. By the terms of the settlement agreement, Student waived the claims she raised in issue three of the complaint.

In her complaint and in her opposition to CAVA’s motion to dismiss, Student contends that CAVA’s failure to provide the services promised under the settlement agreement denied her a FAPE. Assuming that Student’s allegations were presently ripe for

adjudication, her complaint might still subject to dismissal based upon the settlement agreement. As stated above, Student agreed in the settlement agreement that she would withdraw from CAVA and not re-enroll. Unless Student contends that she is presently enrolled in CAVA, CAVA is not Student's local educational agency and does not have an obligation to provide her with a FAPE. Under those circumstances, OAH could not order CAVA to provide Student with a FAPE if CAVA does not owe such a duty to her. The only remedy OAH would be able to order would be compliance with the settlement agreement. Under *Wyner*, such an order would be beyond OAH's jurisdiction. (*Wyner, supra*, 223 F.3d at p.1030.)

Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain the claims raised in Student's complaint. Student's claims in issues one and two are not ripe. Student's claims in issue three were waived by the terms of the settlement agreement.

ORDER

OAH Case No. 2016021035 is dismissed.

DATE: March 21, 2016

DocuSigned by:

*Darrell Lepkowsky*

DARRELL LEPKOWSKY

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Administrative Law Judge

Office of Administrative Hearings