

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012040450

NOTICE OF DISMISSAL OF  
STUDENT'S REQUEST FOR DUE  
PROCESS HEARING

On April 12, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request<sup>1</sup> (complaint) naming the Riverside Unified School District (District) as a respondent.

The complaint contained a single issue. The issue was framed that the District denied Student a free appropriate public education (FAPE) because it violated a July 1, 2007, settlement agreement (agreement) in which the District agreed to reimburse Parents for the cost of a specific compensatory service provided for in the agreement.

PROCEDURAL AND FACTUAL HISTORY

On March 9, 2012, Student filed a complaint against the District which was similar to the present complaint. On April 5, 2012, the District filed a Motion to Dismiss, alleging that OAH did not have jurisdiction to hear Student's allegations to enforce the terms of the parties' 2007 agreement. On April 9, 2012, OAH agreed with the District and dismissed that case based upon a lack of jurisdiction to enforce settlement agreements.

On April 12, 2012, Student filed the present complaint against the District, which is similar to the prior complaint but includes an additional statement alleging that the District's breach of the 2007 agreement denied the Student a FAPE. On April 24, 2012, the District moved to dismiss the present case based upon OAH's lack of jurisdiction to enforce settlement agreements. On May 2, 2012, OAH denied the District's motion to dismiss, holding that Student's complaint was sufficiently pled and that OAH retained jurisdiction over a matter when, as here, a denial of a FAPE had been alleged.

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<sup>1</sup> A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

On May 24, 2012, the District submitted a Motion to Bifurcate Residency Issue, with a supporting declaration of Jack B. Clark, Jr. (motion to bifurcate). The Student timely opposed the District's motion. The District's motion was based upon Student not residing within the District's boundaries during the time frame at issue. The District asserted it did not have a duty to provide Student a FAPE as it was not Student's local educational agency (LEA).

On May 30, 2012, a telephonic prehearing conference (PHC) was held before OAH.<sup>2</sup> During the PHC, argument was taken regarding the District's motion to bifurcate. The District asserted that the issue of Student's residency should be determined in a separate hearing before the matter of whether the District failed to provide Student with a FAPE. The District also alleged that Student's case exceeded the operative, two-year statute of limitations. During this discussion, Student's advocate argued that residency was a not a precondition to implementing the terms of the agreement. Student's advocate also stated that the District's failure to comply with the agreement was discovered on or about December 2009 or January 2010. Based upon the discussion provided during the PHC, OAH agreed with the District that a separate hearing to determine whether the Student was a resident of the District during the timeframe at issue, and whether this matter is precluded by the applicable two years statute of limitations, was necessary for purposes of judicial economy. On May 30, 2012, OAH issued an Order Following the PHC (PHC order) granting the District's motion to bifurcate the due process hearing.

On June 26, 2012, Student's advocate submitted a request for clarification of the PHC order (Student's request for clarification).<sup>3</sup> Student's request for clarification appears to be a motion for reconsideration of OAH's order to bifurcate the Due Process Hearing. Student asserts that this matter should not be bifurcated to first address whether Student was a resident of the District during the time frame at issue. Student states that residency is not an issue for this case because it is uncontested that Student was not a resident of the District. Student asserts that, per the terms of the agreement, the District was responsible for providing the disputed reimbursement regardless of Student's residency. Student claims he has not been a resident of the District since the formation of the July 2007 agreement. Student contends there is no residency requirement pertaining to the District's responsibility for providing him a FAPE. Student fails to provide any legal authority for this theory.

Additionally, in Student's request for clarification, Student asserts that his claim for reimbursement was provided to the District on December 11, 2009. However, Student

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<sup>2</sup> Although Student filed his complaint in pro se, Student submitted a request that his advocate attend the PHC. During the PHC, Student's Parents and advocate each stated that advocate represented Student's interests in this matter. Following the PHC, advocate has filed pleadings with OAH on Student's behalf.

<sup>3</sup> Student's request for clarification of the PHC Order is deemed moot by this Notice of Dismissal of Student's Request for Due Process Hearing.

asserts that he was not made aware of the alleged breach until 45 days following his request for reimbursement. Consequently, Student asserts that he had knowledge of the alleged dispute sometime in “early February [2010].” Here, Student’s complaint was filed with OAH on April 12, 2012, which is more than two years following Student’s understanding of the alleged breach.

#### APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH’s 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 school 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 claims alleging the school district’s failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH’s predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and 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, § 4650), 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.* (N.D.Cal., March 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the United States District Court for the Northern District of California held that when the Student is alleging a denial of 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 a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement do not fall under the jurisdiction of OAH.

With regard to residency, Education Code 56501, subdivision (a), provides that the appropriate agency party in a special education due process hearing is the public educational agency involved in the educational decisions of the child. In California, the determination of which agency is responsible to provide education to a particular child is controlled by residency as set forth in sections 48200 and 48204. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57.)

Under Education Code section 48200, children between the ages of 6 and 18 must attend school in the district “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.) As part of California’s general statutory scheme of determining which school district is responsible for education based on parental residency, Education Code section 48204 includes exceptions for situations other than a child living with a “parent or legal guardian.” (See *Katz v. Los Gatos-Saratoga Joint Union High School Dist.*, *supra*, 117 Cal.App.4th at pp. 57-58.)

Education Code section 48204, provides that agencies other than the school district where the “parent or legal guardian” resides were responsible to provide education under the following circumstances: 1) A pupil placed within the boundaries of that school district in a regularly established licensed children's institution, or a licensed foster home, or a family home; 2) A pupil for whom interdistrict attendance has been approved; 3) A pupil whose residence is located within the boundaries of that school district and whose parent or legal guardian is relieved of responsibility, control, and authority through emancipation; 4) A pupil who lives in the home of a caregiving adult that is located within the boundaries of that school district; and 5) a pupil residing in a state hospital located within the boundaries of that school district. (Ed. Code, § 48204.)

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. §1415(f)(3)(C).) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint, or the local education agency’s withholding of information from the parent that was required to be provided to the parent. Here, Student has not alleged that any exception applies in this case, and as such, Student’s issue must be limited to the two-year statute of limitations.

## DISCUSSION

Student’s sole issue in this matter involves the enforcement of a contract and not whether the District denied Student a FAPE. Student’s complaint merely alleges that the District breached the settlement agreement by not paying an invoice the Parents submitted. The proposed resolution for Student’s issue is for OAH to order the District to “promptly pay the outstanding invoice”, and to order the District enter into a new contract with Parents to ensure “prompt reimbursement” of the disputed reimbursement.

OAH's May 2, 2012, Order denying the District's motion to dismiss contemplated the District's defense that Student was not a resident of the LEA, and stated that an evidentiary hearing was required to prove this defense. Accordingly, the May 30, 2012, PHC Order bifurcated the hearing so that evidence could be presented to prove or disprove that Student was a resident of the District during the applicable time frame. However, Student's request for clarification renders the bifurcation hearing moot, as the Student states he does not dispute that he was not a resident of the LEA. In his request for clarification, Student states the following:

“During the tape-recorded PHC, it was agreed that residency is not an issue for hearing, because it is uncontested that the settlement agreement states that [Student] is not a resident of the [District] and will not be considered so under any circumstances.”

Rather, Student argues there is no residency requirement pertaining to the District's responsibility for providing him a FAPE. Student asserts there is no legal support for applying a residency requirement to the District's liability in performing the terms of the settlement agreement. What Student fails to understand is that residency is a necessary requirement for establishing a LEA's duty to provide a FAPE. Without a FAPE obligation, Student's allegation is purely a breach of contract claim which does not fall under the purview of OAH.

Contrary to Student's argument, a LEA is not responsible for providing a FAPE to a student who is not a resident of that particular LEA. (Ed. Code, §§ 48200, 56028.) To hold otherwise would establish a confusing and unlimited responsibility by all school districts to all students. Because it is uncontested that Student was not a resident of the District during the time frame at hand, or anytime after July 2007, the District was not obligated to provide Student a FAPE in this matter. Consequently, a FAPE issue does not exist in this case and Student's claim is solely related to a breach of the settlement agreement.

Because Student's complaint is limited to a breach of contract issue, and not whether the District denied Student a FAPE, OAH does not have jurisdiction to hear Student's complaint. (*Wyner, supra*, 223 F.3d at pp. 1028-1029.) Additionally, OAH lacks the authority to order a new agreement to permit Parents to more easily access the agreed upon reimbursement. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, \*5.)

Finally, the two-year statute of limitations in this case begins on April 12, 2010, as a request for a due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. Student has not asserted any exceptions that would serve to toll the statute of limitations in this case. Therefore, the issue raised in Student's complaint must be evaluated from April 12, 2010, onward. Because Student stated he was aware of the disputed issue in early February 2010, Student's complaint is barred by the operative statute of limitations.

Accordingly, this matter is dismissed for lack of jurisdiction because (1) Student was not a resident of the District during the time period at issue; (2) OAH lacks jurisdiction where the sole issue is enforcement of a settlement agreement; and (3) Student's issue exceeds the operative statute of limitations.

ORDER

The matter is dismissed and all hearing dates are vacated.

Dated: June 28, 2012

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PAUL H. KAMOROFF  
Administrative Law Judge  
Office of Administrative Hearings