

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

PACIFICA SCHOOL DISTRICT.

OAH Case No. 2014100719

ORDER DENYING MOTION TO
DISMISS

On October 17, 2014, Student's parents on behalf of Student filed a request for a due process hearing (complaint), naming Pacifica School District as the respondent.

On October 31, 2014, Pacifica filed a motion to dismiss Student's case on the basis that the remedies Student seeks are barred by the terms of a prior settlement agreement between the parties.

On November 5, 2014, Student filed an opposition to the motion.

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.)

DISCUSSION

According to the documents filed with Pacifica's motion to dismiss, the parties settled a prior due process case in August 2013. As part of that settlement agreement, Student agreed to waive claims through the end of the 2013-2014 school year, with a few exceptions such as "any prospective IEP or evaluation."

The settlement agreement also provided, in part, that Student would be placed as an eighth grader during the 2014-2015 school year "in a public placement located within the District." The following year, Student would matriculate into high school. Under the terms of the agreement, Pacifica would hold an IEP meeting on or before April 15, 2014, to discuss

placement for the 2014-2015 school year. The agreement also contained the following clause:

If Parent disagrees with the IEP offered by the District for the 2014-2015 school year, Parent agrees that the District will have no obligation to fund any private or non-public school placement during the 2014-2015 school year or thereafter, unless the parties otherwise mutually agree in writing.

According to Pacifica's moving papers, Pacifica complied with the terms of the agreement but the parties had a dispute over the IEP proposal for the 2014-2015 school year. As a result of that disagreement, Student's parents placed Student in a non-public school.

Student then filed the instant complaint, alleging procedural violations and substantive problems with Pacifica's IEP offer. Student's proposed remedies include, among other things, a request that Pacifica fund Student's current placement at the non-public school. Pacifica contends that Student's requested remedies are barred by the terms of the settlement agreement, so the case must be dismissed.

Pacifica's arguments do not provide a sufficient basis to dismiss Student's complaint. While Pacifica's arguments may raise affirmative defenses for a due process hearing, those arguments do not involve jurisdictional matters that may be addressed on a motion to dismiss. Essentially Pacifica seeks a motion for summary adjudication of issues as to certain remedies in Student's complaint. Special education law does not provide a procedure for summary judgment or summary adjudication of issues.

ORDER

Pacifica's motion to dismiss is denied. The matter shall proceed as scheduled.

DATE: November 12, 2014

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings