BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2017100553 ORDER GRANTING DISTRICT'S MOTION TO DISMISS CLAIMS COVERED BY A SETTLEMENT AGREEMENT; AND DENYING DISTRICT'S MOTION FOR SANCTIONS

On October 12, 2017, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Chaffey Joint Union High School District. On October 25, 2017, District filed a motion to dismiss claims covered by an April 7, 2017 settlement agreement which the parties had previously entered into. Student opposed District's motion to dismiss the complaint. On November 2, 2017, OAH dismissed Student's claims occurring on or before the ended of the 2016-2017 extended school year because Student had waived those claims in the April 7, 2017 settlement agreement. On November 20, 2017, Student filed a motion to amend his complaint, which OAH granted on November 27, 2017.

On December 29, 2017, after several unsuccessful meet and confer attempts requesting a dismissal of the claims covered by the April 7, 2017 settlement agreement, District filed a motion to dismiss issues in the amended complaint which was covered by the April 7, 2017 settlement agreement. On January 4, 2018, Student opposed the motion to dismiss. On January 4, 2018, District filed a motion for sanctions against Student's attorney for causing District to file a second motion to dismiss on claims that OAH already dismissed in its November 2, 2017 order. Student did not oppose the motion for sanctions. On January 5, 2018, District replied to Student's opposition of its motion to dismiss.

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 [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.)

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 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.

DISCUSSION

The parties entered into an April 7, 2017 Final Settlement and Release Agreement, a copy of which was attached to District's motion to dismiss, which provided that:

> "Parents, on behalf of themselves and Student, hereby fully release and discharge District … from all past, present and future, known and unknown claims, damages, liabilities, rights, and complaints of whatever kind or nature through the Effective Date, and through the 2016-2017 extended school year…District agrees to provide future IEPs, assessment reports, assessment plans, and IEP meeting notices to Parents in English and Spanish for one year following the Effective Date."

The Agreement also provided that the parties agree to convene an IEP within 60 days of the Effective Date to review the functional behavior assessment, and develop a behavior intervention plan and behavior goals. District further agreed to consider Parents' input and/or the input of Parents' consultants when reviewing the assessment and developing a behavior intervention plan.

With its motion to dismiss, District included a copy of the District's calendar which provided that June 29, 2017 was the end date of the 2016-2017 extended school year; and August 7, 2017 was the beginning of the 2017-2018 school year.

Student stated in his opposition that: the parties entered into a final settlement agreement on April 7, 2017; all of his issues in his amended complaint pertain to the 2017-2018 school year and extended school year; the last day of the extended school year 2017 was June 30, 2017; and the first day of the 2017-2018 school year was August 7, 2017. Student also stated in his Opposition that issues in the amended complaint did not involve compliance with the April 7, 2017 settlement agreement, involved alleged FAPE denials by District in the 2017-2018 school year.

Although Student's opposition clarified that the issues in the amended complaint pertain to the 2017-2018 school year and extended school year, the amended complaint alleged violations from "May 17, 2017 to the present" in many of his issues. Student's claims from May 17, 2017 to June 29, 2017 were covered by his waiver of claims in the April 7, 2017 settlement agreement. Therefore, OAH no longer has jurisdiction to entertain any claims occurring on, or before, June 29, 2017 because the plain language of the April 7, 2017 settlement agreement already resolved those claims. Therefore, any of Student's claims occurring on, or before, June 29, 2017 are dismissed. Student's claims from June 30, 2017 onward, are not covered by the April 7, 2017 settlement agreement, and would be within OAH's jurisdiction to address at hearing.

District's motion for sanctions is denied by discretion of the ALJ. The motion for sanctions did not include specifics on District's attorney's hourly rate. However, ALJ may not be as understanding when it comes to sanctioning Student's counsel should these same issues for dismissal resurface and cause District's attorney to file another motion to dismiss claims that have been addressed by OAH's November 2, 2017 order and this order.

ORDER

1. District's motion to dismiss claims occurring on, or before, June 29, 2017 is granted. The matter will proceed as to claims from June 30, 2017 to November 27, 2017, the date Student filed his amended complaint with OAH. The parties shall file pre-hearing conference statements that reflect this order.

2. District's motion for sanctions is denied

DATE: January 9, 2018

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Sabrina Kong
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SABRINA KONG
Administrative Law Judge
Office of Administrative Hearings