BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: UPLAND UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH Case No. 2018120181 ORDER DENYING MOTION TO DISMISS

On February 11, 2019, Student filed a motion to request an investigation of Administrative Law Judge Alexa J. Hohensee and a dismissal of Upland Unified School District's due process hearing request. This order addresses Student's motion to dismiss.

On February 12, 2019. Upland filed an opposition. On February 13, 2019, Student filed a reply.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education", 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).) 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.)

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.) The *Wyner* court held that the proper avenue to enforce due process hearing decision 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 . . . order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.) However, 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.

In addition, although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (for example, civil rights claims), special education law does not provide for a summary judgment procedure.

DISCUSSION AND ORDER

Student seeks dismissal of this action on multiple grounds: that the assigned administrative law judge cannot conduct a fair and impartial hearing; that Student has filed a notice of withdrawal from this matter, so it should not proceed against him; and that OAH does not have jurisdiction over the matter.

Student's allegations against the hearing judge are treated as a motion to disqualify ALJ Alexa J. Hohensee for cause, and addressed in a separate order.

The instant matter was filed by Upland, and Student is the respondent. A petitioner may withdraw his or her own claim, but a respondent cannot withdraw the claim made against him or her by the petitioner. Accordingly, a notice of withdrawal by Student is insufficient to result in a dismissal of this action filed by Upland.

Student argues that a July 2017 settlement agreement bars Upland's claim against him, and because OAH lacks jurisdiction to enforce settlement agreements, it has no jurisdiction over Upland's claim. Upland does not allege the breach of an agreement, or seek to enforce a settlement agreement. It seeks a determination that it is statutorily entitled to assess Student pursuant to an assessment plan given to Parent on March 5, 2018. OAH has jurisdiction over complaints relating to the evaluation of a child. (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a).) Accordingly, OAH has jurisdiction over Upland's claim and may hear this matter.

Rather than seeking enforcement of the July 2017 settlement agreement, Student is raising that agreement as a bar to Upland's assessment. Student may raise a prior settlement agreement as a defense to Upland's claim, but whether or not the terms of that agreement bar assessment is a matter of fact and law to be determined by the ALJ after presentation of evidence at hearing. Student's motion seeks dismissal of Upland's claim on the merits of her defense, but special education law does not provide a procedure for summary judgement based on Student's defense prior to hearing.

For the reasons stated, Student's motion to dismiss Upland's due process hearing request is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: February 14, 2019

DocuSigned by:
Alexa Hohensee
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ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings