BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: RIVERSIDE UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017080966
PARENT ON BEHALF OF STUDENT, v. RIVERSIDE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2017040949 ORDER DENYING DISTRICT'S MOTION TO DISMISS

On April 21, 2017, Student filed a due process hearing request (complaint) naming Riverside Unified School District, OAH case number 2017040949.

On August 22, 2017, District filed a complaint naming Student, OAH case number 2017080966. On motion by District that the two cases shared common facts and law, Student's case and District's case were consolidated at a prehearing conference on August 25, 2017.

On August 28, 2017, District filed a motion to dismiss Student's complaint, or alternatively, to limit the issues in Student's complaint to the time period after October 14, 2016, because Student had waived all educational claims through October 14, 2016, in a settlement agreement that resolved a prior case between the parties.

At the October 2, 2017 PHC on these consolidated cases, Student waived all educational claims arising on or before October 14, 2016, and Student's issues were limited in the PHC order accordingly. District seeks a determination on its motion to dismiss that all, or some, of Student's limited issues remain outside of OAH jurisdiction.

On October 3, 2017, Student filed an opposition brief.

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. (*Wyner, supra*, 223 F.3d 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 settlement agreement.

OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction, for example, claims brought under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq. (Section 504)). However, special education law does not provide for a summary judgment procedure.

DISCUSSION

Here, Student has voluntarily limited his claims against District to those arising after October 14, 2016, conceding that claims arising before that date have been waived. Accordingly, there is no need to reference the settlement agreement, and District's motion to dismiss claims arising prior to October 14, 2016 is denied as moot.

To the extent District asserts that Student's claims are without merit because District provided Student with agreed upon services, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied.

To the extent District asserts that Student seeks to enforce a settlement agreement and that the complaint should be dismissed for lack of jurisdiction, District's motion is without merit. The claims in Student's complaint expressly allege that District's actions or inactions denied Student a FAPE, and per *Pedraza*, OAH has jurisdiction over such issues.

At the PHC of October 2, 2017, District argued that the issues in Student's complaint, even as limited at the PHC, failed to give District adequate notice of the nature of the problems asserted or the facts relating to the problems. However, the complaint is deemed sufficient unless a party notifies OAH and the other party in writing within 15 days of receiving the complaint that the party believes the complaint has not met the notice requirements. (20 U.S.C. § 1415(c)(2)(C); Ed. Code, § 56502, subd. (d)(1).) District did not file a notice of insufficiency, and accordingly, Student's complaint was deemed sufficient as a matter of law.

Notably, District affirmatively represented to OAH in its motion filed on August 22, 2017, and at the PHC on August 25, 2017, that Student's case and District's case shared common questions of fact and law, and that judicial efficiency and the interests of justice would be served by consolidation. District cannot be heard to contend that it is unaware of the claims it must defend at this late date, four months since the filing of Student's complaint and six business days before the consolidated hearing, and contrary to statute and previous representations to OAH.

District's motion to dismiss Student's complaint, or alternatively to exclude claims arising prior to October 14, 2016, is denied in its entirety.

IT IS SO ORDERED.

DATE: October 3, 2017

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