

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

DIXIE ELEMENTARY SCHOOL
DISTRICT.

OAH Case No. 2014071198

ORDER GRANTING MOTION TO
DISMISS

On July 25, 2014, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint) naming the Dixie Elementary School District as respondent. The complaint alleges six issues. The first issue contends that Dixie failed to meet its child find obligations during and prior to the 2013-2014 school year. Issues two, three, and five involve the August 13, 2013 individualized education program team meeting. In issues four and six, Student contends that Dixie has failed since July 2012 to provide Student with appropriate goals and occupational therapy services.

On August 13, 2014, Dixie filed with OAH a motion to dismiss Student's complaint on grounds (a) that Student's parent had entered into a settlement agreement on December 3, 2013 in which parent waived any and all special education related claims prior to January 10, 2014; and (b) that since January 16, 2014, Student no longer was enrolled or attended school in Dixie.

Student filed an opposition to the motion on August 18, 2014. Dixie filed a reply to Student's opposition on August 18, 2014. On August 19, 2014, Student filed with OAH an amended declaration by Mother.

APPLICABLE LAW AND DISCUSSION

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 (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 (*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.)

More recently, however, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal. 2007) 2007 U.S. Dist. Lexis 26541; 2007 W.L. 949603 (*Pedraza*), the United States District Court for the Northern District of California indicated that when the student is alleging a denial of a free appropriate public education (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 FAPE. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

Both state and federal special education laws favor settlements in due process cases. The IEP process is intended to be nonadversarial. (Ed. Code, § 56341.1, subd. (h).)

When a party files a due process case based on claims that were waived as part of a settlement agreement, OAH will dismiss the case. (See, e.g., *Student v. Los Angeles Unified School District*, (2011) OAH case number 2011091067; *Capistrano Unified School District v. Parent* (2011) OAH case number 2011060748.)

Dixie claims that Student as waived all claims prior to January 16, 2014 because of the December 3, 2013 settlement agreement. In support of its contention, Dixie has attached a copy of the fully executed settlement agreement and a declaration of Rebecca Minnich, the Dixie special education director who signed the agreement on behalf of Dixie. The agreement clearly states that all claims up to January 10, 2014 are specifically waived: "By this agreement, the parent waives all special education claims through January 10, 2014."

Student contends that the agreement was void because the agreement is vague and was void. In support of his contention, Student submitted an amended declaration on August 19, 2014, that she did not understand that she was waiving any rights and that she signed the agreement under distress as Dixie threatened to refer her to the School Attendance Review Board.

In its reply, Dixie submits a December 8, 2013 email from Parent to Ms. Minnich which thanks Ms. Minnich for setting up the work packets for Student until he can commence attending the California Virtual Academy. This email specifically demonstrates that Parent did not rescind the agreement and that Dixie and Parent were each complying with their responsibilities under the agreement.

Here, there is no dispute that Parent and Dixie entered into a settlement agreement which resulted in Parent waiving all special education related claims prior to January 10, 2014. Thus, all claims prior to January 10, 2014 are waived by the agreement.¹ If there is a dispute as to the validity of a settlement agreement, the proper venue is the court system.

Claims after January 16, 2014

Parent admits in her August 19, 2014 declaration that she enrolled Student at the California Virtual Academy prior to entering the December 3, 2014 agreement. This is corroborated by the December 8, 2014 email from Parent to Ms. Minnich. Student also admits that he is currently attending California Virtual Academy. California Virtual Academy is a charter school. Once, Student was no longer enrolled at Dixie, special education responsibility would shift to the California Virtual Academy and/or its local education agency which chartered it. Thus, any claims after Student's enrollment at California Virtual Academy would not be the responsibility of Dixie.

ORDER

Dixie's motion to dismiss is GRANTED. OAH Case No. 2014071198 is hereby dismissed.

IT IS SO ORDERED.

DATE: August 19, 2014

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

¹ January 10, 2014 was a Friday. Dixie schools were not in session the week of January 13, 2014.