

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060335

ORDER GRANTING MOTION TO
DISMISS COMPLAINT WITH
PREJUDICE AND DENYING MOTION
TO CONTINUE AS MOOT

On May 28, 2015, Student, through Parent, filed a Request for Mediation and Due Process Hearing (complaint), naming the Fairfield-Suisun Unified School District as the respondent. The complaint set forth five claims.

On June 5, 2015, Fairfield-Suisun filed a Notice of Insufficiency with respect to the complaint. On June 10, 2015, OAH ruled that the first claim in the complaint was insufficient and the latter four sufficient. Student was given leave to amend the first claim but did not do so within the time allotted, leaving claims two through five pending.

On June 23, 2015, Fairfield-Suisun moved to dismiss the remaining four claims. On June 26, 2015, 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 (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

This limited jurisdiction does not include claims alleging that a district has failed 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, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California 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

Fairfield-Suisun, in its Motion to Dismiss, requests that Student’s complaint be dismissed because OAH lacks jurisdiction over all but one claim against it, and that Student released that claim as of the date of the fully executed Settlement Agreement, dated April 15, 2015. A copy of the Settlement Agreement is attached to the Motion to Dismiss.

Claims Two, Three, and Five

The Settlement Agreement provides that Student will be transferred to the Deaf/Hard-of-Hearing (DHH) Program at Cordelia Elementary School for the balance of the 2014-2015 school year and extended school year. Claims two, three, and five now allege in various ways that Fairfield-Suisun has frustrated that transfer by not properly enrolling Student in the DHH Program at Cordelia.

The second claim alleges that Student was told on May 22, 2015, that he could not attend the agreed-upon program because Fairfield-Suisun had not presented proper registration forms for Student at the mediation. The third claim alleges that Student was locked out of class on May 28, 2015 and told not to return until Fairfield-Suisun presented proper registration forms for Student, which it allegedly had not done as of the filing of Student’s complaint.¹ The fifth claim alleges that District has been harassing Parents since April 15, 2015 with phone calls and mail regarding Student’s attendance, despite not having officially enrolled Student in the DHH Program.

Student’s opposition to the motion to dismiss reiterates and embellishes the claims made in the complaint, but it does not address the issue of jurisdiction raised by Fairfield-Suisun.

¹ Fairfield-Suisun’s moving papers establish that May 28, 2015, was a school holiday and school was not in session.

Claims two, three and five all relate to an alleged breach of the settlement agreement by Fairfield-Suisun. They are therefore not within OAH's jurisdiction under *Wyner, supra*, and will be dismissed.

Claim Four

In the Settlement Agreement, Student waives "any and all matters, claims and causes of action arising under the California Education Code, [and] the Individuals with Disabilities Education Act ("IDEA") . . . whether known or unknown," up to April 15, 2015, the date of the Agreement. Claim four alleges that District acted in bad faith during mediation and has not compensated Student for 3 years of inadequate education. All of those claims arose on or before April 15, 2015, a fact that is confirmed by the content of Student's opposition to the motion to dismiss. Claim four is therefore barred by the Agreement and will be dismissed.

ORDER

1. Claims Two, Three, and Five in Student's complaint are dismissed with prejudice because they present issues of enforcement of the Settlement Agreement over which OAH has no jurisdiction.
2. Claim Four in Student's complaint is dismissed with prejudice because it is waived and released in the express language of the Settlement Agreement.
3. There being no valid pending claims in Student's complaint, all dates are vacated and this matter (OAH Case No. 2015060335) is dismissed with prejudice.
4. In light of the dismissal of this matter, Fairfield-Suisun's pending motion to continue the due process hearing is denied as moot.

DATE: June 29, 2015

/s/

CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings