

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS.

OAH Case No. 2015070341

ORDER GRANTING MOTION TO
DISMISS

On July 2, 2015, Parent on behalf of Student filed with the Office of Administrative Hearings a Request for Mediation and Due Process Hearing (complaint), naming San Rafael City Schools as the respondent.

On August 14, 2015, District filed with OAH a Motion to Dismiss on grounds that the claims raised in the complaint are precluded by the parties' March 23, 2015 and April 17, 2015 settlement agreements in OAH Case number 2015021034.

On August 19, 2015, Student filed an opposition to the motion contending that the claims raised in the complaint are not moot or precluded by the settlement agreements. Student offered no authority or argument to support his opposition.

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 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.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (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

Student raises five claims against District in his complaint. Student alleges that he was denied a free appropriate public education by District (1) suspending Student since January 12, 2015; (2) failing to assess Student in all areas of suspected disability; (3) failing to provide Student an appropriate program; (4) failing to timely provide Student's parent with his educational records prior to and after June 3, 2015; and (5) amending Student's Individualized Education Program on "11/4/14, 11/4/14 and 11/21/14" without a meeting.

District, in its Motion to Dismiss, requests that the complaint be dismissed because Student released all claims through June 3, 2015, against District as of the date of the fully executed Agreement, dated April 16, 2015. A copy of the settlement agreement is attached to District's Motion to Dismiss. Student acknowledges in his opposition and complaint that the parties entered a final settlement agreement on April 16, 2015.

In Student's complaint in OAH Case number 2015021034, he alleges five issues which are identical to those in the present case. Thus, it is readily apparent that these issues were released by the April 16, 2015 settlement agreement.

Because the plain language of the settlement agreement resolves the claims relating in Student's complaint in this case, OAH is without jurisdiction to entertain the claim.

ORDER

OAH Case No. 2015060080 is dismissed.

IT IS SO ORDERED.

DATE: September 11, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings