BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2017100459
v.	ORDER GRANTING MOTION TO DISMISS ISSUES
UPLAND UNIFIED SCHOOL DISTRICT.	

On October 04, 2017, Parent on Behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Upland Unified School District as respondent.

On October 18, 2017, District filed with OAH a Motion to Dismiss Issues on grounds that issues in the complaint are precluded by the parties' July 11, 2017 settlement agreement in OAH Case number 2017031306.

Student has not filed an opposition to District's motion to dismiss.

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. (*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.)

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.

DISCUSSION

Student's complaint contains three issues. First, Student claims that District denied Student a free appropriate public education at the September 19, 2017 individualized education plan meeting, for various listed reasons, including failing to provide for extended school year. Second, Student asserts that District denied Student a FAPE since March 22, 2015, by failing to implement the specialized academic instruction, occupational therapy, and vision therapy from his January 20, 2014 IEP. Finally, Student claims that he was denied a FAPE because Student was not offered extended school year since March 22, 2015.

District's motion seeks dismissal of Student's Issues Two and Three because Student released all claims against District through July 11, 2017, the date of a fully executed agreement. Student refers to the settlement in his complaint, complaining that Parent's signature and District representative's signature were on separate pages. However, although the agreement was executed in counterpart, that fact does not affect its enforceability.[1] The settlement is binding and was the basis for dismissal of Student's prior complaint (OAH case no. 2017031306).

Student's prior complaint in OAH case number 2017031306 alleged issues identical to those contained in Student's complaint in this present matter. Thus, it is readily apparent that these issues were released by the settlement agreement, wherein Student released District from all FAPE related claims, up to July 11, 2017.

Since the settlement agreement plainly resolved all FAPE claims against District up to July 11, 2017, OAH is without jurisdiction to entertain such claims herein. District's motion to dismiss is granted.

ORDER

1. District's Motion to Dismiss Issues Two and Three, as described above, is granted.

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[1] Often a contract is in several counterparts, which are the same, but each paper is signed by a different party, particularly if they are in different localities

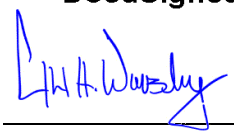
2. Any and all claims that District denied Student a FAPE before July 11, 2017, are dismissed.

3. The matter will proceed to hearing on the remaining claims.

IT IS SO ORDERED.

DATE: October 26, 2017

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings