IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARCIA LYONS and HELOISE BAKER, Plaintiffs,	:	CIVIL ACTION
v.	:	
LOWER MERRION SCHOOL DISTRICT, Defendant.	:	No. 09-5576

ORDER

AND NOW, this 14th day of December, 2010, upon consideration of Plaintiffs' Motion for Judgment on the Pleadings (Doc. No. 14), Defendant's Motion for Judgment on the Administrative Record (Doc. No. 15), and Plaintiffs' response to Defendant's Motion (Docs. No. 16 and 17), the Court GRANTS Plaintiff's Motion, DENIES Defendant's Motion, and REMANDS the case to the Office of Dispute Resolution for the Lower Merion School District for the purpose of conducting a due process hearing consistent with this Order.

I. BACKGROUND

Sean Lyons, a student at Lower Merion High School, experienced significant academic trouble after transferring from the Philadelphia School District in the Fall of 2007. During the Spring of 2007 and Fall of 2008, Defendant Lower Merion[1] School District conducted an educational evaluation of Sean and concluded that he was not eligible for special education services. His parents, Marcia and Carter Lyons, and his grandmother, Heloise Baker, disagreed and requested an independent educational evaluation (IEE) to be conducted by an independent

[1]Though spelled "Merrion" in the caption, "Merion" is correct.

expert at public expense.

In response to every IEE request, the District must *either* acquiesce *or* file a due process complaint with the Office of Dispute Resolution and demonstrate at a hearing that the results of the District's evaluation appropriately reflect the student's capacities. 34 CFR § 300.502(b)(2). The District chose the latter option and filed a due process complaint on March 29, 2009. On May 13, 2009, two days before the scheduled hearing, the parties attended a resolution meeting and settled their dispute. The mother and grandmother agreed to "withdraw their request for an independent educational evaluation at public expense"; the District agreed to "withdraw the Due Process Complaint." (Admin. Rec. (Doc. No. 8), Exh. HO-1, at 5.) The parties also agreed to "explore Alternative Educational placements for Sean" and that the District would "conduct a Multidisciplinary Evaluation pending Parent consent in the Fall of 2009." (Id.)

A few months later, however, Sean's parents and grandmother filed their own due process complaint with the Office of Dispute Resolution, demanding that the Hearing Officer order an IEE at public expense. (See Admin Rec., Exh. P-2.) The District filed a Motion to Dismiss on the grounds that the May 13, 2009 resolution agreement resolved the issue and that the Hearing Officer lacked jurisdiction over resolution agreements under 34 C.F. R. § 300.506(b)(7), which provides for the judicial, not administrative, enforcement of such agreement. Later, the District also argued that a parent may not bring a due process complaint that only seeks an IEE, but rather must request some additional relief. Plaintiffs raised various counter-arguments, but the hearing officer adopted all of the District's positions and dismissed the complaint.

Plaintiffs filed suit in federal court on November 23, 2009, accusing the District of violating Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§

1400–1419, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and the Americans with Disabilities Act,42 U.S.C. § 12131, et seq., by failing to provide Sean with a free appropriate public education as these Acts require. Defendant successfully moved to dismiss the majority of Plaintiffs' claims due to Plaintiffs' failure to exhaust their administrative remedies. (See Doc. No. 10.) Only Plaintiffs' challenge to the Hearing Officer's decision dismissing their due process complaint survives.

The Court now considers Plaintiffs' Motion for Judgment on the Pleadings (Doc. No. 14) and Defendant's Motion for Judgment on the Administrative Record (Doc. No. 15). For the reasons that follow, the Court GRANTS Plaintiffs' Motion and DENIES Defendant's Motion.

II. LEGAL STANDARD

Because the Hearing Officer dismissed Plaintiffs' case without hearing any testimonial evidence, and neither party disputes the accuracy of the administrative record, the Court reviews only the Hearing Officer's legal determinations. Though the Court gives "due weight" to factual findings of state administrative proceedings, Hendrick Hudson Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982), it subjects the Hearing Officer's conclusions of law to plenary review, P.P. v. West Chester Area Sch. Dist., 585 F.3d 727, 735 (3d Cir. 2009).

III. ANALYSIS

Three of the Hearing Officer's conclusions come under scrutiny: (1) that an IEE request alone cannot form the basis of a due process complaint; (2) that a hearing officer lacks jurisdiction to consider the terms of or enforce a resolution agreement; and (3) that the agreement resolving Plaintiffs' previous IEE request barred a subsequent IEE request. The Court finds error in the first and third determinations and declines to opine on the second.

A. IEE Request as the Sole Basis for a Due Process Complaint

The Hearing Officer rejected Plaintiffs' contention that "the IDEA regulations authorize a Hearing Officer to order an independent educational evaluation based solely upon the parents filing a complaint and assuming the burden of persuasion on the appropriateness of the district's evaluation." (Admin. Rec., Hearing Tr., at 31.) She relied on 34 C.F.R. § 300.502(d), which reads, "[i]f a hearing officer requests an independent educational evaluation *as part* of a hearing on a due process complaint, the cost of the evaluation must be at public expense" (emphasis added), to conclude that the a due process complaint cannot, as a matter of law, only seek an IEE. (Hearing Tr., at 31–32, 38.)

In addition to this C.F.R. provision, the Hearing Officer cited a portion of the IDEA statute for support. (Hearing Tr., at 40; Doc. No. 15, at 7–8.) When defining required procedures and protections for parents and school districts, Congress provided that

> [p]arents of a child with a disability [must have an opportunity] to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child[.]

20 U.S.C. § 1415(b)(1). By contrast, when discussing due process complaints, the statute affords

> [a]n opportunity for any party 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[.]

§ 1415(b)(6). According to the Hearing Officer, the lack of the words "independent educational evaluation" in the second section disposes of the issue—Congress mentioned the IEE when referring to one set of procedures, so its failure to do so in the due process section must mean it did not intend to allow the type of complaint Plaintiffs filed here. (Doc. No. 15, at 7–8.)

The Court disagrees. The Hearing Officer's decision, and Defendant's attempt to support it, ignores the plain language of § 1415(b)(6), which allows a party, including a parent, to file a due process complaint concerning "any matter relating to the . . . evaluation . . . of the child." No one disputes that an IEE qualifies as an evaluation, nor could they. Although 34 C.F.R. § 300.502(d) allows a hearing officer to order an IEE "as part of" a larger process, it does not prohibit a complaint brought to obtain only an IEE. An analysis of § 1415(b)(6)'s explicit language reveals the error in the Hearing Officer's conclusion.

B. Effect of the Resolution Agreement

In addition to concluding that Plaintiffs' due process complaint merited dismissal because it only sought an IEE, the Hearing Officer decided that she lacked authority to interpret or enforce the resolution agreement. (Hearing Tr., at 22.) Even so, she considered the agreement's existence to decide that Plaintiffs' request had already been resolved. (Id.) Plaintiffs allege error in this puzzling set of conclusions—how could the Hearing Officer determine whether the claim Plaintiffs raised fell within the resolution agreement's purview without interpreting the agreement's terms? (Doc. No. 14, at 13.) According to Plaintiffs, if the Hearing Officer indeed lacked jurisdiction to either interpret or enforce the resolution agreement, she could not have validly dismissed their complaint because, by doing so, she both interpreted the agreement as barring Plaintiffs' claims and enforced it.

The Court is similarly puzzled. No authority exists for the proposition that a hearing officer cannot interpret a resolution agreement's terms. Perhaps as a result, Defendant argues only that "[w]hile the hearing officer does not have the authority to enforce the resolution agreement, this does not mean the hearing officer must ignore its existence" and urges the Court

to uphold the administrative decision because the resolution agreement in this case prevented Plaintiffs from filing their due process complaint. (Doc. No. 15, at 13.)

Whether a Hearing Officer has jurisdiction to enforce resolution agreements appears to be an open question in this circuit. The argument against jurisdiction finds support in two regulatory provisions: 34 C.F.R. § 300.506(b)(7) and § 300.510(d)(2). The first provides that "[a] written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States"; the second notes the same for resolution agreements. Thus, the argument goes, a hearing officer does not have jurisdiction to enforce resolution and mediation agreements because they may be enforced in state and federal courts, and thus must be. (Doc. No. 15, at 13.) Notably, neither of these provisions precludes a hearing officer from reviewing a settlement agreement's terms; at most, they prevent the hearing officer from enforcing the agreement.

In H.C. ex rel. L. C. v. Colton-Pierropont Cent. Sch. Dist., 341 F.App'x 687 (2nd Cir. 2009), the Second Circuit addressed the jurisdiction-to-enforce question, concluding that because the "resolution of the [contractual dispute surrounding the settlement agreement's terms] will not benefit from the 'discretion and educational expertise [of] state and local agencies, [or the] full exploration of technical educational issues' related to the administration of the IDEA . . . a due process hearing before [a hearing officer] was not the proper vehicle to enforce the settlement agreement." Id. at 690 (quoting Polera v. Bd. of Educ. of Newburgh Enlarged City Sch. Dist., 288 F.3d 478, 487 (2d Cir. 2002)). This conclusion finds further support in the well-settled principle that "if there exists a special statutory review procedure, it is ordinarily supposed that Congress intended that procedure to be the exclusive means of obtaining judicial review in those

cases to which it applies." Compensation Dep't of Dist. Five v. Marshall, 667 F.2d 336, 340 (3d Cir. 1981).

Even if the Court finds that logic persuasive, however, Plaintiffs here did not seek to enforce the resolution agreement; they filed a due process complaint in an attempt to get a publicly funded IEE. Typically, a complaint's contents determine which body has jurisdiction over the dispute. See, e.g., Joyce v. RJR Nabisco Holdings Corp., 126 F.3d 166, 171 (3d Cir. 1997) (claim arises under federal law if it is apparent from the face of the complaint that federal law created the cause of action); Grand Union Supermarkets of the V.I., Inc. v. H.E. Lockhart Mgmt., 316 F.3d 408, 410 (3d Cir. 2003) (diversity jurisdiction exists only if complaint alleges that plaintiff is a citizen of a particular state and that the defendants are citizens of a different state). And state educational agencies seem to consistently enforce settlement agreements in school districts' favors to preclude parents from bringing particular due process complaints, without undertaking analyses of their own jurisdiction. See, e.g., Palmerton Area Sch. Dist., Pennsylvania State Ed. Agency, No. 8241-07-08 LS (June 2, 2008), available at 109 L.R.P. 14860.

At bottom, the Court finds inadequate guidance in binding precedent and declines to opine on whether jurisdiction to enforce a resolution agreement lies in the administrative forum. Because Plaintiffs appeal both the Hearing Officer's jurisdictional decision and her interpretation of the resolution agreement, another path to resolution presents itself: if the Court concludes that the resolution agreement in this case does not bar Plaintiffs' due process complaint, it need not decide whether the Hearing Officer may enforce the agreement.

In arguing that the resolution agreement covered Plaintiffs' subsequent IEE request,

Defendant relies on res judicata principles, which prevent the relitigation of "an issue on which a final decision has been rendered in a previous litigation." (Doc. No. 15, at 10 (quoting Office of Dispute Resolution Manual § 1201).) See also Wilkes ex rel. Mason v. Phoenix Home Life Mut. Ins. Co., 587 Pa. 590, 607 (2006) ("Res judicata, or claim preclusion, prohibits parties involved in prior, concluded litigation from subsequently asserting claims in a later action that were raised, or could have been raised, in the previous adjudication."); Knox v. PA Bd. of Probation and Parole, 138 Pa.Cmwlth. 344, 349 (1991) ("The doctrine of res judicata applies to administrative agency determinations.") But Defendant conflates "final decision" with "final resolution," disregarding the fact that no administrative or judicial judgment resolved the dispute over the first IEE request. Consistent with general preclusion doctrine, the Pennsylvania intermediate appellate court has held in the educational context that res judicata applies only where a hearing has occurred. Montour Sch. Dist. v. S.T., 805 A.2d 29, 40–41 (Pa. Cmwlth. 2002). Accordingly, the Court proceeds by examining the resolution agreement's terms under contract law, determining whether Plaintiffs contracted-away their right to file a due process complaint requesting an IEE for the second time. See Plymouth Mut. Life Ins. Co. v. Illinois Mid-Continent Life Ins. Co. of Chicago, Ill., 378 F.2d 389, 391 (3d Cir. 1967)

State law governs the interpretation of the settlement agreement's terms. Id. In Pennsylvania, "[w]hen a written contract is clear and unequivocal, its meaning must be determined by its contents alone." East Crossroads Ctr., Inc. v. Mellon-Stuart Co., 416 Pa. 229, 230, 205 A.2d 865, 866 (1965). Although courts generally strive to ascertain and give effect to the parties' intent, Dep't of Transp. v. Pennsylvania Indus. for the Blind and Handicapped, 886 A.2d 706, 711 (Pa. Cmwlth. 2005), the inquiry is limited to the contract itself where its "terms

are clear and unambiguous," Kripp v. Kripp, 578 Pa. 82, 90 (2004).

The resolution agreement at issue here is crystal clear. Both parties promised to withdraw their pending requests—for an IEE and due process hearing, respectively—to jointly explore alternate educational placements, and to have Sean undergo new evaluations in the Fall of 2009. (Admin. Rec., Exh. HO-1, at 5.) Nothing in the agreement prevented Plaintiffs from filing a new IEE request, and its clarity prevents the Court from looking beyond the document itself.

The authorities cited by Defendant do not compel a different conclusion. In Ballard v. Philadelphia School District, 273 F. App'x 184 (3d Cir. 2008), the Third Circuit upheld the denial of a parent's motion to vacate a settlement agreement with the school district under abuse-of-discretion review. Id. at 187. There, the agreement resolved all outstanding disputes, thereby barring the parent from attempting to void the agreement to seek a different result. Id. at 186. Similarly, in Palmerton Area Sch. Dist., Pennsylvania State Ed. Agency, the agency denied a parent's request for particular services because a previously-reached settlement agreement already delineated the procedures by which the district would accommodate the student's needs at that juncture. No. 8241-07-08 LS, available at 109 L.R.P. 14860. Because the resolution agreement between Plaintiffs and Defendant did not include any terms governing when Plaintiffs could next request an IEE, it did not bar the Hearing Officer from reviewing Plaintiffs' due process complaint on the merits.

III. CONCLUSION

The Court GRANTS Plaintiff's Motion on the Administrative Record and REMANDS the case to the Office of Dispute Resolution for the Lower Merion School District for the purpose of conducting a due process hearing to address the substance of Plaintiffs' complaint. The Clerk

of Court shall close this matter for statistical purposes.

BY THE COURT:

/S/LEGROME D. DAVIS
Legrome D. Davis, J