

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

NAPA VALLEY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009080824

ORDER GRANTING MOTION TO
DISMISS

On August 25, 2009, Mother, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Napa Valley Unified School District (District).¹ On August 21, 2009, attorney Sally Jensen Dutcher, on behalf of the District, filed a Motion to Dismiss. OAH has not received a response from Student.

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); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

OAH’s 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 school 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 claims alleging the school district’s failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH’s predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and this ruling was upheld

¹ Student served a copy of the complaint on the District on or about August 12, 2009, but did not file a copy with OAH until August 25, 2009.

on appeal. The *Wyner* court held that “the proper avenue to enforce SEHO orders” was the California Department of Education’s (CDE) compliance complaint procedure (Cal. Code Regs., tit. 5, § 4650), 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.) A party’s remedy to enforce the terms of a settlement agreement is either to file a compliance complaint with CDE, Education Code, section 56045, or institute a court action. (See, *Porter v. Manhattan Beach Unified School District* (9th Cir. 2000) 307 F.3d 1064.)

More recently, however, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 U.S. Dist. Lexis 26541, the United States District Court for the Northern District of California held that when the Student is alleging a denial of a free appropriate public education 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 a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by CDE’s compliance complaint procedure.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman’s Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) “Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties’ expressed objective intent, not their unexpressed subjective intent, governs.” (Id. at p. 686.)

DISCUSSION

Student’s complaint raises four claims against the District regarding its failure to timely assess Student pursuant to the provisions of the parties’ June 4, 2009 Settlement Agreement in OAH Case No. 2009050015.

The District, in its Motion to Dismiss, requests that Student’s complaint be dismissed because Student is requesting that OAH issue an order that the District comply with the provisions of the Settlement Agreement to assess Student, consistent with the May 26, 2009, assessment plan, and to hold an individualized educational program meeting after the assessments are completed. According to the complaint, the dispute between the District and Student involve when and where the independent speech and language and occupational therapy assessments are to be conducted. Student’s proposed remedies request that OAH appoint Student an attorney to ensure that the District complies with its legal responsibilities and that the District cooperate with Student’s parent in assessing Student. Student’s proposed remedies involve the enforcement of the mediated agreement, and not whether the District denied Student a FAPE by failing to timely assess Student.

Because the claims in Student's complaint involve whether the District breached the terms of the settlement agreement and not whether the District denied Student a FAPE, OAH does not have jurisdiction to entertain these claims, and the District's motion to dismiss is granted.

ORDER

The District's Motion to Dismiss is granted, and the matter is dismissed. All hearing dates are vacated.

Dated: August 31, 2009

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings