

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2011030418

ORDER GRANTING MOTION TO  
DISMISS

On March 8, 2011, Student filed a Request for Due Process Hearing (complaint) against the Capistrano Unified School District (District). On April 7, 2011, the District filed a Motion to Dismiss, on the grounds that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear Student’s complaint because Student seeks to nullify the parties’ settlement agreement (Agreement). On April 11, 2011, Student filed an 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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 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

The District asserts that the Agreement between the parties bars Student’s claims against the District. Student contends that enforcement of the Agreement would deny him a free appropriate public education (FAPE), and that OAH should void the Agreement because of changed circumstances regarding Student’s health and that a settlement agreement cannot waive a minor’s future right to receive a FAPE.

The dispute between Student and the District that gave rise to this complaint involved the District’s implementation of the Agreement, and whether Student would attend full-time at San Juan Hills High School (SJHHS), or to continue with a mix of home instruction and attendance at SJHHS. Student and the District entered into the Agreement in September 2010, and Paragraph C2b of the Agreement states in relevant part:

“Thereafter, [Student] will attend instruction time at SJHHS . . . for the amount of time determined by the SJHHS school psychologist and the District physician-consultant. The most recent determination regarding class attendance **by the SJHHS school psychologist and the District physician-consultant or SJHHS nurse**, and the May 11 and 18, 2010 IEP (except as modified by this Agreement), will constitute stay-put in the event of any dispute over placement between the Parties.” (Emphasis added)

The Agreement also contained language that Student waived all claims against the District through the end of the 2011 extended school year.

District has held periodic progress review meetings for Student after the Agreement was signed. The progress review meeting at issue occurred on January 20, 2011, at which both the physician-consultant and psychologist determined that, based upon Student’s health and academic progress, Student should attend school five days a week, as opposed to continuing part time at school and part time with home instruction.

Student’s opposition to the District’s motion to dismiss raises numerous legal theories that Student’s Parent and the District could not waive in the Agreement Student’s future right to receive a FAPE, and that changed circumstances regarding Student’s health voids the Agreement. The issues that Student wishes that OAH decide are outside the scope of OAH’s

jurisdiction as OAH does not have the authority to void or modify the parties' agreement. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, \*5.) Therefore, OAH does not have jurisdiction to hear Student's complaint, and the District's motion to dismiss is granted.

**ORDER**

The District's motion to dismiss is granted.

Dated: April 12, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings