

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. CULVER CITY UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2011060217
CULVER CITY UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2011060075 ORDER DENYING STUDENT'S REQUEST FOR DISMISSAL FILED JUNE 6, 2011

On June 1, 2011, Culver City Unified School District (District) filed a Request for Due Process Hearing in OAH case number 2011060075 (District's case), naming Parent on behalf of Student (Student) as respondent, and seeking an order permitting it to assess Student. On June 3, 2011, Student filed a Request for Due Process Hearing in OAH case number 2011060217 (Student's case), naming District as respondent. By Order dated June 9, 2011, Student's case and District's case were consolidated.

On June 6, 2011, Student filed a "2nd Request for Emergency Stay Put," which also contained a "Request for Dismissal." On June 9, 2011, District filed an opposition.¹

By way of background, District and Student settled a previous matter on April 15, 2011. District's complaint alleged that the pursuant to the settlement agreement, the parties had agreed to an assessment plan. District's complaint alleged that Student had not attended scheduled testing sessions. District's complaint sought an order allowing it to conduct assessments. Student's complaint, in pertinent part, was entitled "Due Process Complaint: CCUSD Breech (sic) of Contract, Request to Rule: No-OAH Jurisdiction to Enforce Settlement Agreement and Order Sanctions on District and District Counsel." It alleged that District breached the terms of the settlement agreement providing for reimbursement of certain ongoing expenditures and reimbursement for certain past expenditures.

¹ On June 10, 2011, Student filed another Motion to Dismiss on different grounds, which will be dealt with by separate Order.

Student's complaint alleged that Student had sought relief in Superior Court, where, apparently, District had argued that Student had failed to exhaust her administrative remedies by failing to first file with OAH and/or the California Department of Education. Student's complaint therefore sought a ruling either that OAH is without jurisdiction to enforce the settlement agreement, or that she has exhausted her administrative remedies.

APPLICABLE LAW

Parents or public agencies involved in educational decisions about a pupil 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).) This includes due process complaints initiated by school districts concerning lack of parental consent to assessments. (Ed. Code, § 56501, subd. (a)(3).)

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's June 6, 2011 Request for Dismissal, contained within her 2nd Request for Emergency Stay Put, argues that District's complaint should be dismissed, since OAH is without jurisdiction to enforce settlement agreements, and since District's complaint seeks enforcement of the assessment provisions of the settlement agreement.

In its Opposition, District does not specifically address Student's argument that it is improperly seeking to invoke OAH jurisdiction to enforce the terms of a settlement agreement. Rather, it relies on the general rule that a district may file for due process before OAH, for an order permitting it to assess.

While District's complaint does invoke the settlement agreement, OAH's jurisdiction to adjudicate District-initiated due process complaints concerning lack of parental consent to assessments is independent of that agreement. (Ed. Code, § 56501, subd. (a)(3).) Because District asserts claims regarding assessment, that arise independently of the agreement, OAH has jurisdiction to entertain these claims.

ORDER

Student's June 6, 2011 Request for Dismissal is denied.

Dated: June 13, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings