

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011080980

ORDER DENYING MOTION TO
DISMISS

On August 23, 2011, Laurene Bresnick, Attorney at Law, filed a Request for Mediation and Due Process Hearing (complaint), on behalf of Student, naming the San Francisco Unified School District (District).

On September 1, 2011, Daniel A. Osher, Attorney for District, filed a Motion to Dismiss. On September 7, 2011, Student filed a response to District's Motion to Dismiss. On September 7, 2011, District filed a reply to Student's response.

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).) The Office of Administrative Hearings (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.)

More recently, 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 (FAPE) 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 raises two claims against District in his Complaint, as follows:

Claim A: "Respondent District has procedurally violated [Student's] right to FAPE under the IDEA, by failing to offering (*sic*) FAPE for the 2011-2012 school year based on the findings and orders rendered at due process hearing by ALJ Barth."

Claim B: "Respondent District has violated [Student's] right to a substantively appropriate special education program and placement by failing to offer a placement and services that are reasonably calculated to confer educational benefit on [Student]."

District, in its Motion to Dismiss, requests that Claim A of Student's Complaint be dismissed because by analogy to *Wyner* OAH does not have authority to enforce compliance with its own orders. District does not challenge Claim B.

In the May 9, 2011 Decision in OAH Case #2010110455, the undersigned did find that Student's then current private placement was proper for the purposes of awarding compensatory education to Student. However, the Decision did not order District continue this as Student's prospective placement. The Decision ordered District to hold an IEP team meeting within 45 days of the order. Furthermore, the finding of a denial of FAPE in the Decision were based on procedural irregularities during the IEP development process, and did not render a finding upon the substantive offer of placement and services by District, at that time.

Claim A of Student's complaint states that District procedurally violated Student's right to a FAPE for the 2011-2012 school year. Student then references the findings from the May 9, 2011 Decision, the applicability of which is discussed above. While Student uses the findings from the Decision as a basis for his claim, Claim A does not require a finding as to enforcement of the Decision. The claim, instead, arises out of an IEP offer that occurred

after the May 9, 2011 Decision. The issue raised in Claim A concerns whether a FAPE was offered for the 2011-2012 school year, an issue that was not litigated in the prior case.

Accordingly, Student's Claim A does not require OAH to address the issue of enforcement of a prior OAH order and therefore, OAH does have jurisdiction to entertain these claims.

ORDER

District's Motion to Dismiss is denied.

Dated: September 14, 2011

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings