

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015010700

ORDER DENYING MOTION TO
DISMISS

On January 15, 2015, Student filed a Request for Mediation and Due Process Hearing (complaint), naming Long Beach Unified School District. The complaint alleged that certain services were to have been provided by District pursuant to a settlement agreement entered into in August 2014, but had not been provided, and that Student was denied a free appropriate public education as a result. The complaint stated that it seeks remedies based upon denial of FAPE only and is not an action for breach of the agreement, or to enforce the agreement.

On January 23, 2015, District filed a Motion to Dismiss. District argued that the complaint alleged a breach of a settlement agreement that was outside the jurisdiction of the Office of Administrative Hearings. District also argued the matter was not ripe for adjudication, based on certain facts pertaining to the timing of the services. District also argued that the claims had been released in the settlement agreement, but it did not attach a copy of the release language.

On January 27, 2015, Student filed a response. As explained below, the Motion is denied.

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. (*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, however, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the United States District Court for the Northern District of California held that when the Student is alleging a denial of FAPE 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 the California Department of Education's compliance complaint procedure.

DISCUSSION

District's first contention, based on lack of jurisdiction, is without merit. Student's complaint alleged denial of FAPE arising out of the violation of a settlement agreement, as opposed to merely a breach of that agreement. Pursuant to the authority discussed above, OAH has jurisdiction to entertain these claims.

District's second contention, that the matter is not ripe for adjudication, relies upon factual contentions that may be established at hearing. Special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied.

District's third contention that the claims were released by the waiver in the settlement agreement is unsupported by any evidence. The settlement agreement was not filed with District's motion, therefore the contention that the agreement contains language barring Student's claims is unsubstantiated. District's Motion to Dismiss is therefore denied.

ORDER

District's Motion to Dismiss is denied.

DATE: February 2, 2015

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings