

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH Case No. 2016010404

v.

SAN DIEGO UNIFIED SCHOOL  
DISTRICT,

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SAN DIEGO UNIFIED SCHOOL  
DISTRICT,

OAH Case No. 2016031078

v.

PARENT ON BEHALF OF STUDENT.

ORDER DENYING MOTION TO  
DISMISS

On January 14, 2016, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming San Diego Unified School District. Student thereafter moved for leave to file an amended complaint, which was granted on April 14, 2016.

On May 24, 2016, District filed a Motion to Dismiss Issues in the amended complaint. Student filed a response on May 27, 2016.

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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 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

District seeks to dismiss Student's fourth and fifth issues in her amended complaint.

Student's issue four states: "Was Student denied a FAPE from October 15, 2015 to November 12, 2015, when the District failed to implement the September 3, 2015 settlement agreement, by not providing Student with specialized academic instruction services delivered by an appropriately credentialed teacher?" Student's issue five reads: "Was Student denied a FAPE from September 8, 2015 to November 12, 2015, when the District failed to provide her with appropriate specialized academic instruction services?"

District, in its Motion to Dismiss, requests that Student's Complaint be dismissed because Student waived all claims against District as of the date of the fully executed Agreement, dated September 3, 2015. Alternatively, District asserts that OAH does not have jurisdiction to hear issues arising from a settlement agreement. A copy of the settlement agreement is attached to District's Motion to Dismiss. Student acknowledges in his amended complaint at page 5 that the parties entered into that settlement agreement. However, Student contends the claims in the amended complaint were not for breach of the settlement agreement, but rather for a denial of a free and appropriate public education.

Neither of Student's challenged claims argues that she should receive specialized instruction services because they were required under the settlement agreement. Both claims assert that Student was denied a FAPE because she did not receive the specialized academic instruction. Issue four references the settlement agreement, but states that the implementation of the agreement was necessary not because District was contractually bound

to do so, but because Student needed those services to receive a FAPE. Under *Pedraza*, OAH has jurisdiction to hear those claims. Student may present her case that she is entitled to receive specialized academic instruction from a properly credentialed teacher, but solely on the ground that she requires it to receive a FAPE.

District's assertion that Student should be barred from raising issues four and five here because she agreed to waive them seeks to have OAH enforce the terms of the settlement agreement against Student, which it persuasively argues elsewhere is beyond OAH's jurisdiction. Such contractual agreements, reached through the formal mediation process, must be resolved in state or federal courts. (*S.L. v. Upland Unified Sch. Dist.*, slip op. at 15 (U.S.D.C. C.D. California August 24, 2010) CV 08-04936 GAF.) District must go to such courts to seek enforcement of the terms of the settlement agreement.

Pursuant to the authority discussed above, OAH does have jurisdiction to entertain these claims.

#### ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: May 27, 2016

DocuSigned by:

*Chris Butchko*

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CHRIS BUTCHKO

Administrative Law Judge

Office of Administrative Hearings