

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

TEHACHAPI UNIFIED SCHOOL  
DISTRICT.

OAH Case No. 2016030580

ORDER GRANTING MOTION TO  
DISMISS ISSUES ONE AND TWO

On March 11, 2016, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings naming Tehachapi Unified School District. On March 29, 2016, Student filed with OAH an Amended Request for Due Process hearing (complaint) naming Tehachapi.

On March 31, 2016, Tehachapi filed with OAH a motion to dismiss issues One and Two.

No response to the motion was received by OAH from Student.

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); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

OAH’s limited jurisdiction does not include jurisdiction over claims alleging a school district’s failure to comply with a settlement agreement or order in a decision rendered by OAH. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the school 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 claims alleging the school district’s failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH’s predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond

its jurisdiction, and 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, § 4650), 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.)

## DISCUSSION

Student’s complaint contains four issues. Issue One alleges that Tehachapi denied Student a free appropriate public education “by failing to implement the mainstream time in class and associated general education opportunities.” Issue Two alleges that Tehachapi denied Student a free appropriate public education “by denying her her least restrictive environment by failing to implement her mainstream time in class and associated general education opportunities.”

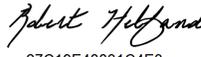
In support of Issues One and Two, Student alleges that she had filed with OAH a previous case (OAH Case Number 2015030954). On March 26, 2016, OAH determined that the Student’s stay put was her March 17, 2014 Individualized Education Program as amended on November 14, 2014, which required Student 30 minutes of mainstreaming. OAH Case Number 2015030954 went to due process hearing for ten days in July and August 2015. On October 2, 2015, OAH issued a decision in OAH Case Number 2015030954, which decided one issue in favor of Student and the remaining issues in favor of Tehachapi. On October 8, 2015, Student’s attorney wrote to Tehachapi asserting Student’s stay put was the March 26, 2015 OAH stay put order. On December 4, 2015, Student filed an appeal of the October 2, 2015 OAH decision to the United States District Court for the Eastern District of California.

Student’s first two issues contend that Tehachapi is failing to provide Student the mainstreaming portion of stay put during the pendency of her federal appeal of the October 2, 2015 OAH decision in OAH Case Number 2015030954.

Since Student has appealed the October 2, 2015 decision, OAH no longer has jurisdiction over matters involving the appeal, which includes stay put issues. The proper venue to decide what stay put is during the pendency of Student's appeal is the United States District Court where the appeal is pending. Thus, Tehachapi's motion to dismiss Issues One and Two is GRANTED.

IT IS SO ORDERED.

DATE: April 7, 2016

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ROBERT HELFAND  
Administrative Law Judge  
Office of Administrative Hearings