

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS, SAN
BERNARDINO COUNTY PROBATION
DEPARTMENT, AND
SAN BERNARDINO COUNTY
DEPARTMENT OF BEHAVIORAL
HEALTH.

OAH CASE NO. 2010060257

ORDER DENYING MOTION TO DISMISS

On June 6, 2010, Steven A. Figueroa, advocate for Student, filed a Request for Mediation and Due Process Hearing (complaint), naming San Bernardino County Superintendent of Schools (District), San Bernardino County Probation Department (Probation), and San Bernardino County Department of Mental Health.¹

On June 11, 2010, Amy Foody, program manager for District, filed a Motion to Dismiss as to Student's complaint. OAH has not received a response from Student.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

¹ San Bernardino County Department of Mental Health was named in Student's complaint. Hereinafter, the agency will be referred to by its correct title, San Bernardino County Department of Behavioral Health (Behavioral Health).

responsibility].) 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*].)

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 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 claims that since he was placed in custody on May 25, 2010, in the San Bernardino County Juvenile Hall (Juvenile Hall), his Individualized Education Program (IEP), which includes services provided by Behavioral Health, has not been implemented. As a result, Student claims he was denied a FAPE.

Student also claims that District failed to comply with a 2006 class action settlement agreement which established District's obligation to students in custody in Juvenile Hall. As a result, Student claims he was denied a FAPE.

In its motion, District requests that Student's complaint be dismissed because the complaint fails to specify what IEP services and provisions of the settlement agreement were not implemented. District also contends that failures to implement an IEP and comply with a settlement agreement are both outside of OAH's jurisdiction. However, Student contends the claims in the above-titled proceeding were not merely a failure to implement an IEP or breach of the settlement agreement but, rather, District's failure to comply with an IEP and settlement agreement resulted in a denial of a FAPE.

Pursuant to the authority discussed above, OAH does have jurisdiction to entertain these claims. In addition, although OAH has granted motions to dismiss claims that are facially outside of its jurisdiction, factual issues, such as whether or not failure to comply with an IEP or prior settlement agreement resulted in a denial of FAPE, are appropriately resolved by taking evidence at a hearing. However, Student is advised to further clarify the issues and proposed resolutions in preparation for the prehearing conference and due process hearing.

ORDER

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

IT IS SO ORDERED.

Dated: June 21, 2010

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings