

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

AZUSA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010100750

ORDER DENYING MOTION TO  
DISMISS

On October 13, 2010, Student filed a Request for Due Process Hearing against the Azusa Unified School District (District). On October 22, 2010, the District filed a Motion to Dismiss Issue 1.1<sup>1</sup> in Student’s complaint because the Office of Administrative Hearings (OAH) does not have jurisdiction to hear Student’s claim because it involves enforcement of the parties’ settlement agreement. OAH has not received a response 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); Ed. Code, § 56501, subd. (a).) 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.)

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<sup>1</sup> The complaint contains one issue with three subparts, labeled 1.1, 1.2 and 1.3.

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 alleges in Issue 1.1 of the complaint that the District denied him a free appropriate public education by failing to assess him after Parent consented to the District’s May 10, 2010 assessment plan. The District contends that OAH does not have jurisdiction to hear this claim because the parties’ May 4, 2010 Settlement Agreement (Agreement)<sup>2</sup> required Parent to sign the District’s proposed assessment plan.

On or about May 4, 2010, the parties entered into an Agreement to resolve OAH Case No. 2010020167. In the Agreement, Student agreed that the District could conduct audiological, vocational and assistive technology assessments. On May 10, 2010, the District sent Student’s counsel an assessment plan. On May 11, 2010, Student’s counsel sent a letter to District’s counsel that stated that Parent consented to the assessment plan. The District refused to accept the May 11, 2010 letter as consent to the assessment plan because Mother needed to sign the assessment plan. To date, Parent has not signed the May 10, 2010 assessment plan, or personally signed a letter granting consent for the assessments.

While the District attempts to frame Issue 1.1 as whether Student complied with the Agreement, the issue is whether Student’s counsel’s May 11, 2010 letter constituted consent for the assessment pursuant to sections 300.9 and 300.303 of Title 34 of the Code of Federal Regulations regarding appropriate parental consent for an assessment. Accordingly, regarding Issue 1.1, OAH has jurisdiction to entertain this claim.

## ORDER

The District’s Motion to Dismiss is denied.

IT IS SO ORDERED.

Dated: November 1, 2010

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings

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<sup>2</sup> The District did not provide a copy of the Agreement in its motion.