

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011030191

ORDER DENYING MOTION TO
DISMISS

On February 28, 2011, Parents on behalf of Student (Student) filed a Request for Mediation and Due Process Hearing (complaint), naming the Los Angeles Unified School District (District).

On March 22, 2011, District filed a Motion to Dismiss Student’s complaint on the grounds that the Office of Administrative Hearings (OAH) did not have jurisdiction to hear Student’s first claim, and that Student’s second claim did not involve any asserted denial of a free appropriate public education (FAPE). On March 28, 2011, Student filed a response opposing the motion.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Improvement Act (IDEA 2004) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); Ed. Code, § 56000.) Student 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).) OAH has jurisdiction to hear due process claims arising under the IDEA. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [*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 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 FAPE as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement. Settlement agreements are interpreted using the same rules that apply to the interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.)

DISCUSSION

The parties entered into a settlement agreement in September 2010, under which District apparently agreed to reimburse Parents for the costs of Student's placement at a nonpublic school called the Vanguard School (Vanguard). Student's first problem claims that, in the settlement agreement, District agreed to reimburse Parents for the costs of his placement at Vanguard for the "fall semester" of the 2010-2011 school year, and that District has failed to make any reimbursement payments to Parents. District claims that this issue involves the alleged breach of a settlement agreement, and that OAH does not have jurisdiction to hear the matter. Neither party submitted a copy of the September 2010 settlement agreement to OAH, and the terms of the agreement, including how and when reimbursement of tuition was to be made to Parents, are unknown. Since District is the moving party on the motion, District did not sustain its burden to establish the terms and conditions of the settlement agreement. Student's first problem is not dismissed at this time.¹

Student's second problem claims that the settlement agreement provided for an individualized education program (IEP) meeting to take place no later than January 28, 2011; that District convened the IEP team meeting on January 26, 2011; and that District made an offer to place Student again at Vanguard for the spring semester of the 2010-2011 school year, which was rejected by Parents. Parents rejected the offer because the terms and conditions required Parents to accept it: (1) not as an IEP offer but as a proposed

¹ District may consider renewing its motion to dismiss this problem, sufficiently prior to the telephonic prehearing conference (PHC) set for April 18, 2011, so that Student may file a response prior to the PHC, in order to obtain a ruling at the PHC.

“amendment” to the September 2010 settlement agreement; (2) with District’s promise to reimburse Parents for the tuition costs at Vanguard; and (3) with a “waiver of all claims” through the 2010-2011 school year. Parents argue that Student is entitled to a hearing on this claim, both to adjudicate District’s “retaliatory” conduct, and to “resolve Student’s placement and tuition reimbursement” for the spring semester.

District contends that Student’s second problem does not involve a claimed denial of FAPE but merely involves contractual terms. While Parents did not use the exact words of FAPE, their complaint expressly requests resolution of Student’s special education placement, as offered by District at the January 2011 IEP meeting. OAH has jurisdiction squarely under the IDEA to hear Student’s issue as to his placement and the funding for his services for the remainder of the school year. OAH does not have jurisdiction to hear retaliation claims. However, evidence of District’s motives may be relevant at hearing and Parents contend that the funding issue is relevant to the question whether the District has made a bona fide FAPE offer for Student’s placement for the spring semester. Again, District bears the burden of proof on the motion to dismiss Student’s second problem and did not submit any evidence of the January 2011 IEP offer, in whatever form it took, or its terms and conditions. In addition, because Student’s second problem involves matters that require an evidentiary hearing on the merits, it is not dismissed.

ORDER

District’s Motion to Dismiss is denied.

Dated: April 6, 2011

/s/

DEIDRE L. JOHNSON
Administrative Law Judge
Office of Administrative Hearings