

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LINCOLN UNIFIED SCHOOL DISTRICT,

OAH CASE NO. 2012010600

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On January 20, 2012, Student’s parent, on behalf of Student (Student), filed a due process hearing request (complaint), naming the Lincoln Unified School District (District) as the respondent.

On February 6, 2012, the District filed a Motion to Dismiss Complaint, seeking to dismiss Student’s complaint on the basis that it alleges claims which are outside the jurisdiction of the Office of Administrative Hearings (OAH).

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 [FAPE] 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.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541 (*Pedraza*), 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’s first issue alleges: “LUSD Governing Board/CWA denied my son FAPE Dec 2011 to Jan 2012, by denying him placement, program, and services (readmission)/ See attached”

The attachment states:

“During the period Dec 14, 2011 to present Jan 2012
LUSD Governing Board/CWA denied my son FAPE Dec 11 to Jan 2012
Nature denied returning him to full student status (sic)
Denied readmission to the District
Haven’t received services
Haven’t received interim services.”

The District moves to dismiss this issue on the basis that it is outside of the jurisdiction of OAH to decide. The District explains in its motion that Student was expelled from school due to misconduct. Student brought a due process hearing request before OAH to challenge the District’s manifestation determination. OAH upheld the District’s action in the case of *Parent on Behalf of Student v. Lincoln Unified School District* (2011) Case number 2011090998.

The District’s position is well taken. OAH does not have jurisdiction to order a school district to readmit a pupil to school after an expulsion under these circumstances. Student’s first issue must be dismissed.

Student’s second issue alleges: “Lincoln USD is in breach of settlement agreement dated January 22, 2010, by not following the discipline, assessments, goals and objectives, progress reports, residency agreements.” The due process complaint attaches pages which outline the specific nature of the breach of the settlement agreement alleged by Student. The allegations appear to involve the use of Student’s disciplinary record during the OAH proceeding in case number 2011090998 and at other times.

The District moves to dismiss the second issue on the basis that OAH has no jurisdiction to rule on the breach of the settlement agreement. The District's position is well taken. OAH is not the proper forum to resolve questions regarding an alleged breach of a settlement agreement. There are no allegations to bring this matter within the *Pedraza* exception to the general rule. The second issue must be dismissed.

Student's third issue alleges: "Lincoln USD/CWA is denying Student LRE from Dec of 2011 to January 2012. The District has offered the student inappropriate and dangerous placement as a vehicle of harassment and retaliation and sought to deny this student LRE, and slander him under false flag to mask their hidden agenda to deny the student FAPE."

The proposed resolution for the issue states: "Student, parent and this consultant seeks declaratory relief. Return Student to Lincoln High School, full status student and eligibility to participate in extracurricular activities, such as football, basketball, track and prom and other activities."

The District moves to dismiss this issue on the basis that it merely restates Student's first issue, seeking to overturn the District's expulsion order, and therefore is beyond the jurisdiction of OAH. The District also argues that issues regarding harassment, retaliation, and slander are beyond the jurisdiction of OAH to resolve.

The District's position is well taken. It is clear from the proposed resolutions and the remainder of Student's due process request that the third issue, like the first issue, improperly seeks to have OAH overturn an expulsion proceeding. OAH has already addressed the manifestation determination issue in a prior case, and Student's new allegations are outside the jurisdiction of OAH. The third issue must be dismissed.

Student's fourth issue alleges: "LUSD breach of IEP agreement school year 2010-2011. The District failed to offer the Student any relevant or meaningful special education services regarding students many fold disabilities. See attached."

The attachment repeats the allegation and adds: "The student is considered 'homeless' under any reasonable interpretation of the McKinney-Vento-Act. This issue has been settle (sic) by OAH in just the last 90 days."

The proposed resolution for this issue states "LUSD finance a PC lap top, Dell Computer and printer for student. Academic tutoring and pay tuition at Fusion Academy and transportation."

The District argues that this allegation must be dismissed, because OAH has no jurisdiction over the McKinney-Vento-Act. The District also argues that OAH does not have jurisdiction regarding an alleged breach of the 2010 settlement agreement.

However, Student does not allege a breach of a settlement agreement. Instead, Student alleges that the District breached Student's IEP by failing to offer or provide relevant

or meaningful special education services. The mention of McKinney-Vento-Act appears to be surplus language. This allegation does state a claim within the jurisdiction of OAH, and the motion to dismiss this allegation is denied.

Student's issue five alleges: "LUSD/CWA has denied me parent access school year 2010-2011 and school year 2011-2012, to records, tapes, MP3 recordings, and e-mails." Student does not allege any facts to show a denial of FAPE based on any failure to produce those records. Absent a denial of FAPE, OAH has no jurisdiction to decide this issue. Issue five must be dismissed.

ORDER

The District's Motion to Dismiss Issues one, two, three, and five is granted. Those issues are hereby dismissed from the case.

The District's Motion to Dismiss Issue four is denied. The matter shall proceed as scheduled as to that issue.

IT IS SO ORDERED.

Dated: February 17, 2012

/s/

SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings