

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012030030

ORDER GRANTING MOTION TO
DISMISS AND DISMISSING
COMPLAINT

On March 1, 2012, Student filed a Request for Due Process Hearing (complaint), naming District as the respondent. On March 8, 2012, District filed a Motion to Dismiss, alleging that the sole issue raised in Student’s complaint was whether the District breached a settlement agreement by failing to honor an indemnity clause. District supported its motion with a declaration and an authenticated copy of the final settlement agreement at issue in the complaint. OAH received no response to the Motion to Dismiss 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*].) 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.)

More recently, however, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 U.S. Dist. Lexis 26541, the United States District Court for the Northern District of California held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the

settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

DISCUSSION AND ORDER

Here, Student alleges in the complaint that District and Student entered into a final settlement agreement (FSA) on January 27, 2011 in which District agreed, with regard to Student's educational program, to conduct specified assessments and to provide placement and specified special education services, including compensatory hours. The FSA also includes mutual general release and discharge which states, in relevant part: "Nothing is [sic] this Agreement is a waiver of the right to indemnity should [anonymous student] file a lawsuit against [Student] for damages regarding the altercation of [date]."

Student's complaint acknowledges that District fulfilled its obligations under the FSA with regard to the educational program. Student is not alleging any facts that claim District denied Student a FAPE. Instead, Student alleges that District failed to comply with the right to indemnity provision quoted above. As a proposed resolution, Student seeks an order that District must indemnify Student under the FSA for legal fees and costs incurred in a non-specified litigated matter.

As discussed above, OAH has no jurisdiction to enforce a settlement agreement where the complaint does not allege that District has denied Student a free appropriate public education (FAPE). Here, the sole issue in the complaint is not "with respect to any matter relating to the identification, evaluation, or educational placement of" Student," or the provision of a FAPE to Student. Accordingly, OAH has no jurisdiction over Student's complaint. Issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure or a court of competent jurisdiction.

District's motion to dismiss is granted and the matter is dismissed.

IT IS SO ORDERED.

Dated: March 20, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings