

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012100435

ORDER DENYING STUDENT'S
MOTION FOR ORDER APPOINTING
EVALUATOR FOR AN
INDEPENDENT EDUCATIONAL
ASSESSMENT

On November 14, 2012, the parties participated in a scheduled mediation before an Administrative Law Judge (ALJ). At that time, the parties entered into an interim agreement, which included an Educationally Related Behavioral Health Assessment (ERBHA). The parties stipulated to continuance of all dates, scheduling a reconvened mediation for February 14, 2013, a prehearing conference (PHC) for March 13, 2013, and a hearing for March 25, 26, 27 and 28, 2013.

On January 16, 2013, Student filed a motion for an order appointing Dr. Gary Katz to administer an independent educational evaluation, due to District's alleged bad faith and delay tactics. Student argues that District and its counsel have refused to agree to an assessor, other than those "which counsel for district routinely relies upon." Student argues that an independent educational assessment (IEE) requires an assessor who is trusted by both parties; otherwise, the assessment would not be independent.¹

District timely filed opposition to Student's motion, stating that OAH did not have jurisdiction to enforce a settlement agreement reached at mediation. District also argues that OAH cannot order an independent educational evaluation absent a due process hearing and that the assertions that the interim agreement was for an IEE were incorrect, referring to the executed assessment plan.

The Student's motion is denied, for three reasons. First, OAH does not have jurisdiction to enforce a settlement agreement reached at mediation. Student's motion asserts that the interim settlement agreement was for an IEE and that District has refused to agree to an independent assessor.

Generally, OAH has jurisdiction to hear due process claims arising under the Individuals with Disabilities Education Act (IDEA). (*Wyner v. Manhattan Beach Unified School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) It does not, however, have

¹ Though not specifically stated in Student's motion, it is clear that Student expects District to pay for the IEE.

jurisdiction to enforce settlement agreements related to due process complaints; that is the responsibility of the courts and California Department of Education. (*Id.* at pp. 1028- 1030.) Under IDEA, parties may resolve their disputes either through the mediation process or through the resolution process. In either situation, the parties must execute a legally binding agreement that sets forth what the parties have resolved that is enforceable “in any State court of competent jurisdiction or in a district court of the United States.” (20 U.S.C. §§ 1415(e)(2)(f) and (f)(1)(B)(iii).) California statutes mirror their federal counterparts. (see, Ed. Code, §§ 56500.3, subd. (f); 56501.5, subd. (f)(2).) Therefore, the courts, rather than OAH, have jurisdiction to enforce a settlement agreement.

Second, if Student is merely asking OAH to order an IEE, Student does not allege entitlement to an IEE in the complaint. If Student wanted to have OAH determine whether she is entitled to an IEE by a particular assessor, Student was required to assert this, as a problem to be resolved, in the complaint. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) Student did not. An IEE is not an issue before OAH in this due process hearing request.

Finally, even if an IEE was an issue in Student’s due process complaint, District disputes the facts alleged by Student in support of the motion. A hearing on the evidence would be necessary to resolve the factual disputes.

The District stated in its opposition that it was concurrently filing a due process request regarding its right to evaluate the Student by a District-chosen assessor. Evidence relative to whether District may assess Student, or if Student is entitled to an IEE by her chosen assessor, may be presented in the District’s newly filed due process hearing request.

ORDER

Student’s motion for an order appointing an evaluator to conduct an independent educational assessment, at District’s expense, is denied.

Dated: January 24, 2013

/s/

CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings