

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WEST CONTRA COSTA UNIFIED
SCHOOL DISTRICT

v.

PARENT ON BEHALF OF STUDENT.

OAH CASE NO. 2013030286

ORDER GRANTING MOTION TO
DISMISS

On March 11, 2013, District filed a Request for Due Process Hearing (Complaint), naming Parent On Behalf of Student as the respondent. On April 4, 2013, Student filed a Motion to Dismiss.

On April 4, 2013, District filed a response with the Office of Administrative Hearings (OAH). On April 5, 2013, Student filed a reply and an amended reply.

APPLICABLE LAW

Reassessment of a student eligible for special education must be conducted at least every three years, or more frequently if the local educational agency determines conditions warrant reassessment, or if a reassessment is requested by the student's teacher or parent. (20 U.S.C. § 1414(a)(2)(A); Ed. Code, § 56381, subds. (a)(1), (2).)

A reassessment requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f).) To obtain consent, a school district must develop and propose a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (f).) If the parents do not consent to the plan, the district can conduct the reassessment only by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300(c) (2006); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f), 56501, subd. (a)(3), 56506, subd. (e).) The District must propose a written assessment plan and include notice of the procedural safeguards under the Individuals with Disabilities Education Act (IDEA) and state law. (20 U.S.C. § 1414(a)(1)(D)(ii); Ed. Code, §§ 56321, 56329, 56381.)

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 [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.)

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 (hereafter *Pedraza*), 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

Timeliness of Motion

In its Opposition to the Motion to Dismiss, the District raises the timeliness of Student's motion. The prehearing conference (PHC) order in this case stated that any further motions in this case must be accompanied by a showing of good cause as to why it was not filed earlier. In this case, District is represented by skilled counsel and Student is unrepresented. Student explains in his reply that he did not fully understand the issue regarding enforcement of the settlement agreement until during or after PHC on April 3, 2013, and the Motion was filed on April 4, 2013. Furthermore, jurisdictional challenges are allowed at any time in a proceeding. The Motion to Dismiss was timely and good cause is found for it to be heard after the PHC.

Motion to Dismiss

District raises one claim against Student in its Complaint, as follows¹: Is the District entitled to complete its triennial psychoeducational and behavioral evaluations of Student, to which Parents previously consented in the May 25, 2010 settlement agreement, without parental restrictions and conditions qualifying their consent?

Student, in his Motion to Dismiss, requests that District's Complaint be dismissed because the District's issue is a claim that Student has breached the settlement agreement between the parties which was executed on May 25, 2010. District acknowledges in its Complaint that the parties entered a final settlement agreement which contained consent for the District to complete psychoeducational and behavioral assessments on Student in the Spring of 2013. The May 25, 2010 settlement agreement has been submitted as part of the pleadings and has been reviewed by the undersigned.

The settlement agreement sets out in detail the timing of the triennial assessment, the areas of functioning to be assessed and the assessments to be conducted. Parental consent to the assessment is provided through the settlement agreement and requires no further presentation of an assessment plan by the District to the Parent for consent. In fact, the parties have already carried out some of the assessments agreed to in the May 25, 2010 settlement agreement. This dispute concerns Parent's refusal to present Student for the psychoeducational and behavioral portions of the triennial assessment without conditions.

While both the *Wyner* and *Pedraza* cases applied to alleged breaches of settlements by the education agencies, there is nothing to suggest that the jurisdictional limitations set out in those cases would not apply to an alleged breach of a settlement agreement by a student, or his or her parents. Accordingly, there is a threshold question in this case of whether the District is seeking to enforce the May 25, 2010 settlement agreement, with respect to assessment of Student, and whether such an action is outside the jurisdiction of OAH.

The issue is further complicated by the fact that the District could have brought this case as either a denial of its statutory right to conduct a triennial assessment of Student or as a breach of a settlement agreement by Parent. Here, the District did not pursue assessment in its Complaint through the statutory reassessment scheme as detailed above. Although the parties indicated that the District gave the parent an assessment plan in November 2012 and it remains unsigned, the District did not pursue its right to a hearing to override lack of parental consent to the unsigned assessment plan.

The District instead seeks an order to allow it to complete the psychoeducational and behavioral assessments pursuant to the May 25, 2010 settlement agreement without restrictions or conditions imposed by Parent. Crucial to the determination of this issue is the

¹ The District's two issues from the Complaint were changed to one issue and one proposed remedy. The PHC order contained the issue as written here.

fact that May 25, 2010 settlement agreement acts in place of an assessment plan for these assessments and the settlement agreement affirmatively states that no other assessment plan will be required. The District clearly pleads in the Complaint that it is asking for an order to enforce its right to assess which stems from the settlement agreement. During the PHC, the District reaffirmed its position that it seeks an order permitting it to carry out assessments as agreed to in the settlement agreement, which it alleges Parent has failed to comply with. Any decision on the merits of this case, including whether the agreement between the parties contemplated restrictions or conditions, will require an analysis of the settlement agreement and a determination regarding enforcement of the agreement.

Under *Pedraza*, then, there must be an allegation that the alleged violation of the settlement agreement resulted in a denial of FAPE for Student in order for OAH to have jurisdiction to hear this matter. District alleged no such resulting denial of FAPE to Student. Therefore, this matter involves only the breach of a settlement agreement and not a resulting denial of FAPE and places this matter outside the jurisdiction of OAH. Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain these claims and the case is dismissed.

ORDER

Student's Motion to Dismiss is granted.

Dated: April 5, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings