

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of :

STUDENT,

Petitioner,

v.

BASSETT UNIFIED SCHOOL DISTRICT,

Respondent.

OAH CASE NO. N2006080963

**ORDER DENYING MOTION TO
COMPEL STUDENT'S
COMPLIANCE WITH STAY PUT
ORDER**

On August 30, 2006, the Office of Administrative Hearings (OAH) received a due process complaint and stay put motion from Mother, on behalf of her son, Petitioner Student (Petitioner), naming Bassett Unified School District (District) as the Respondent. Thereafter the District submitted an opposition to the stay put motion, and OAH received additional information from both parties regarding the motion. Petitioner sought stay put in the eighth grade at the District's Edgewood Academy, while the District argued that his stay put placement was in ninth grade at the District's Bassett High School.

On September 21, 2006, OAH issued an order denying Petitioner's request for stay put placement in the eighth grade, and finding that Petitioner's current stay put placement is in the ninth grade at Bassett High School, with instruction and services pursuant to the last agreed-upon and implemented individualized education program (IEP) dated April 5, 2005. On October 2, 2006, OAH issued an order denying Petitioner's motion for reconsideration of the September 21, 2006 stay put order.

On October 12, 2006, OAH received from attorney Pablo A. Tagre, on behalf of the District, a motion to compel Petitioner's compliance with the stay put order.¹ The District alleges that "Petitioner has failed to comply with the September 21, 2006 Order and

¹ Because of the legal issues involved, and because the District cannot prevail in this motion, the undersigned Administrative Law Judge (ALJ) determined that there was no need to give Petitioner the opportunity to respond to the District's motion to compel.

continues to insist on receiving eighth grade instruction.”² The District requests that OAH enforce its September 21, 2006 Order.

APPLICABLE LAW

In *Wyner v Manhattan Beach Unified School District* (9th Cir. 2000) 223 F.3d 1026, 1029, the Ninth Circuit Court of Appeals held that the Special Education Hearing Office (SEHO) did not have jurisdiction to enforce its orders. (See *Porter v. Manhattan Beach Unified School District* (9th Cir. 2002) 307 F.3d 1064, 1070-1071.)

Although OAH has now taken over hearing special education due process cases, that does not change the applicability of the *Wyner* case. OAH has authority to hear and decide administrative cases, but there is no statutory or case authority which gives OAH the power to enforce special education orders or decisions.

An order or decision issued by OAH constitutes a final administrative determination and is binding on all parties. (See Ed. Code § 56505, subd. (h).) OAH orders may be enforced in a court of competent jurisdiction, or through a compliance complaint with the California Department of Education. (*Id.*; see Cal. Code of Regs., tit. 5, § 4650, subd. (a)(viii)(B); *Porter, supra*, 307 F.3d at 1070-1071.)

Unless a court of competent jurisdiction orders otherwise, an OAH order remains in full force and effect, and is legally binding upon the parties. (Ed. Code § 56505, subd. (h), (k).) Disobedience of an order may constitute contempt, and may be grounds for an order of sanctions. (Cal. Code Regs., tit. 5 § 3088; Cal. Code Regs, tit. 1, § 1040; Gov. Code § 11455.30.) In particular, California Code of Regulations, title 1, section 1040 provides:

(a) The ALJ may order a party, a party's representative or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.

(1) “Actions or tactics” include, but are not limited to...the failure to comply with a lawful order of the ALJ.

DISCUSSION

The stay put order issued by OAH on September 21, 2006, is a final administrative order which is enforceable in court and binding on the parties until final resolution of this

² The District explains that, to ensure that Petitioner at least receives some education, and without waiving its position that Petitioner’s placement is in ninth grade, the District has permitted Petitioner to attend eighth grade “until attendance in the appropriate placement could be compelled or enforced.”

due process case.³ (See 20 U.S.C. § 1415(j); Ed. Code §§ 48915.5, 56505, subd. (d), (h).) Hence, absent valid grounds for reconsideration, the parties have exhausted their administrative remedies regarding the current stay put placement.

Pursuant to the Ninth Circuit's holding in *Wyner, supra*, 223 F.3d at 1069, OAH does not have jurisdiction to enforce its own orders. The District may enforce the September 21, 2006 stay put order in court or pursue any other remedies.

Finally, it must be emphasized that disagreement with an OAH order does not permit a party to disobey that order. While the ALJ has not received evidence establishing whether Petitioner is actually in violation of the stay put order, out of an abundance of caution the ALJ reminds Petitioner and his parents that OAH orders are binding, and failure to comply with an order may constitute contempt warranting sanctions.

ORDER

1. Because OAH lacks jurisdiction to enforce its orders, the District's motion to compel compliance with the September 21, 2006 stay put order is denied.

2. Nothing in this order shall be construed to prevent the District from pursuing any other remedies it may have to enforce the stay put order.

Dated: October 17, 2006

SUZANNE B. BROWN
Administrative Law Judge
Office of Administrative Hearings
Special Education Division

³ Unless the order specifies otherwise, a stay put order is effective for the pendency of the due process hearings. (20 U.S.C. § 1415(j); Ed. Code §§ 48915.5, 56505, subd. (d), (h).)