

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

In the Matter of:

STUDENT,

Petitioner,

v.

LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH
AND PALMDALE SCHOOL DISTRICT,

Respondents.

OAH CASE NO. N 2007110570

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On November 20, 2007, Student filed a Request for Mediation and Due Process Hearing (complaint) naming the Los Angeles County Department of Mental Health (DMH) as the respondent. On December 12, 2007, Student was granted permission to file an amended complaint that named both DMH and the Palmdale School District (District) as respondents. The complaint alleged that Student was denied a free and appropriate public education (FAPE) because a referral by the District to DMH for assessment, that was initiated as the result of a settlement agreement between the District and Student, should have been accepted by DMH. As to the District, the complaint alleged that the District failed to timely follow the referral procedures.

On January 2, 2008, the District filed a "Motion to be Dismissed as a Party" (Motion to Dismiss), in which it contended: 1) that the District was not a necessary or proper party to the action because the referral to DMH resulted from a settlement agreement, and thus was outside the jurisdiction of the Office of Administrative Hearings (OAH); 2) that the settlement agreement did not impose time limits on the referral, such that Student's complaint was meritless; and 3) that the school district where Student currently resides is the proper party to the complaint, not the District. Student opposed the motion.

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); 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, which must be pursued through the California Department of Education's compliance complaint procedures. (*Id.* at p. 1030.) However, OAH has jurisdiction to adjudicate claims alleging denial of a FAPE as a result of a violation of a settlement agreement, as opposed to "merely a breach" of the agreement that should be addressed by the California Department of Education's compliance complaint procedure. (*Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541.)

DISCUSSION

As an initial matter, Student's complaint is not limited to enforcement of the settlement agreement, but instead alleges that Student was denied a FAPE because of the way that the District implemented its obligations under the agreement. Further, as noted by the District, there is no time limit in the settlement agreement as to when the referral should have been filed. Accordingly, because the timeliness of the referral was not addressed by the settlement agreement, Student's complaint cannot be construed as an action to enforce the settlement agreement. The complaint is not outside OAH jurisdiction.

Further, the District's contention that it is not the proper school district party is meritless. The District acknowledged that it had the power to initiate a referral to DMH when it settled a prior due process complaint brought by Student with the promise of initiating a referral to DMH. Now, the District denies that it is the proper party to make such a referral. The District supplied no authority in its motion for the proposition that it is not a proper party. Moreover, even if the provision of FAPE in the future is the responsibility of another local education agency, that does not bar Student from seeking an award of compensatory education from the District for past FAPE denials. Accordingly, the District's Motion to Dismiss fails.

ORDER

The District's Motion to Dismiss is denied.

Dated: January 18, 2008



RICHARD T. BREEN
Administrative Law Judge
Special Education Division
Office of Administrative Hearings