

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

WINDSOR UNIFIED SCHOOL DISTRICT
AND INSIGHT SCHOOL OF
CALIFORNIA – NORTH BAY,

v.

PARENT on behalf of STUDENT.

OAH CASE NO. 2010031210

ORDER DENYING MOTION TO
DISMISS

On March 17, 2010, Windsor Unified School District (District) and Insight School of California – North Bay (Insight), through counsel, filed with the Office of Administrative Hearings (OAH) a Request for Due Process Hearing (Complaint) that named Parent on behalf of Student. The Complaint contained a Motion to Consolidate which OAH will decide in a separate order.

On March 21, 2010, Parent filed with OAH a Motion to Dismiss the Complaint.

On March 23, 2010, counsel for the District and Insight filed with OAH an Objection to Respondent’s Motion to Dismiss.

APPLICABLE LAW

Special education due process hearing procedures extend to the public agency involved in any decision as regards a special needs student. (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, § 56028.5.) The public agency may initiate the due process hearing procedure, inter alia, when there is a proposal to initiate an evaluation of a special needs pupil, and when the parent of the child refuses to consent to an assessment. (Ed. Code, § 56501, subd. (a)(1), (3).)

Normally, OAH does not have the authority to decide a claim that a party has breached a settlement agreement of a special education dispute. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) However, in *Pedraza v. Alameda Unified Sch. Dist.*, 2007 U.S. Dist. LEXIS 26541 (D. Cal. 2007), the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to “merely a breach” of the mediated settlement agreement that should be addressed by the California Department of Education’s compliance complaint procedure.

DISCUSSION

In this case, the District and Insight are public agencies that are involved in decisions relating to Student's education. Through the Complaint in this matter, the District and Insight seek an Order requiring Parent to make Student available for a reassessment. The scope of the reassessment is set forth in an assessment plan, dated September 25, 2009, and a settlement agreement between the parties, dated February 9, 2010.

In her Motion to Dismiss, Parent makes numerous contentions regarding the viability of the Complaint, including the argument that OAH lacks the authority to interpret and enforce the February 9th settlement agreement. However, the Complaint does not seek an Order holding that Parent has breached the agreement. Instead, the Complaint alleges that the District and Insight are entitled to reassess Student based upon the existence of conditions that warrant such a reassessment. OAH has the authority to determine such a claim. Despite the many objections raised by Parent in the Motion to Dismiss, the law is clear that, if Parent wants Student to receive a special education program, she must make Student available for a reassessment. (*Gregory K. v. Longview Sch. Dist.* (9th Cir. 1987) 811 F.2d 1307, 1315.)

ORDER

Parent's Motion to Dismiss is denied.

IT IS SO ORDERED.

Dated: March 30, 2010

/s/

TIMOTHY L. NEWLOVE
Presiding Administrative Law Judge
Office of Administrative Hearings