

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

TUSTIN UNIFIED SCHOOL DISTRICT,

v.

PARENTS ON BEHALF OF STUDENT.

OAH CASE NO. 2010031603

ORDER GRANTING MOTION TO
DISMISS

On March 23, 2010, the Tustin Unified School District (District) filed a Request for Due Process Hearing (complaint) against Student.

On May 12, 2010, Student filed a Motion to Dismiss on the ground that the Office of Administrative Hearings (OAH) lacks jurisdiction to enforce the parties' August 2009 Settlement Agreement (Settlement Agreement). On May 17, 2010, the District filed a response, and the Student a reply brief on May 18, 2010.

APPLICABLE LAW

Parents and local educational agencies 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. (*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.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, 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 (FAPE) 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

The District’s complaint requests an order that its February 3, 2010 transition plan for behavior intervention services from one provider to another provides Student with a FAPE. Student asserts that the District’s request is covered by the terms of the Settlement Agreement, which extends through the end of the 2009-2010 school year (SY). The District asserts that the claim in the above-titled proceeding were not resolved as part of the Settlement Agreement.

The Settlement Agreement provides that Student will attend a full-inclusion classroom with the supports and services in the February 4, 2009 individualized education program (IEP), with the exception of the timing of the change in providers of the behavior intervention services from the prior private provider to the District provider. In the Settlement Agreement, the parties left the timing of the transition to the discretion of the parties, which OAH does not have the authority to interpret. The Settlement Agreement governs Student’s placement through SY 2009-2010, which would include the provision of behavior intervention services. Therefore, OAH does not have jurisdiction to hear the District’s claims. The District is requesting that OAH determine the appropriate transition plan for behavior intervention services during the period governed by the Settlement Agreement, to which the parties are bound. OAH has no jurisdiction to confirm the appropriateness of a settlement agreement or to order a departure from its terms.

ORDER

Student’s Motion to Dismiss is granted.

IT IS SO ORDERED.

Dated: May 26, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings