

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

RIPON UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2010080006

ORDER DENYING MOTION TO  
DISMISS

On July 30, 2010 Student filed a Request for Due Process and Mediation (complaint), naming Ripon Unified School District (District) as the respondent. On August 23, 2010, District filed a Motion to Dismiss the third and fourth issues of Student’s complaint, alleging that the claims were barred by a January 2009 settlement agreement between District and Student. For the reasons stated below, the motion is denied.

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 party failed 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 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

Here, Student’s complaint raises five claims against District. Student alleges that, in the school year 2009-2010, District had no suitable placement for Student, that Student was unable to find a suitable private placement, and Student remained at a District school for the 2009-2010 school year. The third and fourth claims seek remedies for violation of IDEA by District in the 2009-2010 school year.

District attached to its motion an undated copy of a General Release and Settlement Agreement (Settlement Agreement) between the parties. Paragraph 13 of the Settlement Agreement states in relevant part:

“[I]f paragraph 9 above is implemented and Parents obtain their own educational placement and services for Student for the 2009-10 school year, Parents and Student further waive all claims under the [IDEA] and California special education law for a [FAPE] through and including the end of the 2008-09 school year, including summer 2009 extended school year, also as specified below. No other future claims are waived.”

District contends that Students third and fourth claims are barred by paragraph 13 of the Settlement Agreement. However, Student’s complaint alleges facts that raise an issue as to whether the condition precedent to paragraph 13 occurred. Therefore, whether paragraph 13 bars Student’s claims for the 2009-2010 school year is an issue of fact for the hearing officer to determine and not one that is properly decided in a motion to dismiss. District may raise the issue of the bar of the Settlement Agreement as an affirmative defense at hearing. Pursuant to the authority discussed above, OAH has jurisdiction to entertain Student’s third and fourth claims in his complaint.

## ORDER

District’s Motion to Dismiss is denied.

Dated: August 26, 2010

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings

