

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013100547

ORDER GRANTING MOTION TO  
DISMISS ISSUES

On October 16, 2013, Student filed a Request for Due Process Hearing (complaint), naming Oakland Unified School District (District) as the respondent. On November 25, 2013, the District filed a motion to dismiss six of the Student’s issues alleging that the issues are outside the jurisdiction of the Office of Administrative Hearings (OAH) because they involve a request to enforce a settlement agreement. On November 27, 2013, Student filed an opposition to the motion to dismiss, alleging that the issues in question are not asking for enforcement of provisions of a settlement agreement but instead allegations that the District denied Student a free appropriate public education (FAPE) when the terms of the settlement were not met by the District.

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. (*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.)

In a limited exception to *Wyner, 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 FAPE as a result of a violation of a mediated settlement agreement where the parties acknowledged in the settlement that the services the District agreed to provide constituted a FAPE.

## DISCUSSION

Student raises 20 claims against the District in his complaint and as clarified in the Order After Prehearing Conference dated December 3, 2013. The District alleges in its motion to dismiss that Student’s issues (as numbered in the Order After Prehearing Conference) 6, 7, 8, 10A, 10B, and 10C should be dismissed as outside OAH’s jurisdiction. A copy of the settlement agreement is attached to the District’s motion to dismiss. Student acknowledges in his complaint that the settlement agreement was executed on February 14, 2013. Student contends the claims in the above-titled proceeding were not merely a breach of the settlement agreement but, rather, a denial of a free appropriate public education.

Student’s issues subject to the motion to dismiss are as follows:

6. Did the District deny Student a FAPE from March 2013 through the present by failing to offer an appropriate transition plan, goals or services and by failing to implement the referral to a transition services agency, failing to provide a transition assessment and failing to provide transition services as required in the February 14, 2013 settlement agreement?

7. Did the District deny Student a FAPE by failing to provide Student with a Functional Behavior Assessment and consultation with a non-public agency behavioral consultant as required pursuant to the February 14, 2013 settlement agreement?

8. Did the District deny Student a FAPE by failing to provide Student with an independent psycho-educational assessment by a mutually agreed upon assessor as required pursuant to the February 14, 2013 settlement agreement?

10. Did the district commit the following procedural violations, which resulted in denying the parent the opportunity to have meaningful participation in the IEP process and depriving Student of meaningful educational benefit:

A. Failing to hold an IEP team meeting by April 15, 2013, and failing to invite the NPA behavior consultant, independent psycho-educational assessor, or transition

agency to the IEP team meeting as required pursuant to the February 14, 2013 settlement agreement?

B. Failing to provide Parent with monthly consultation regarding Student's needs, progress and implementation of the IEP, as required pursuant to the February 14, 2013 settlement agreement?

C. Failing to hold an informal meeting after Student accrued three days of unexcused absences, and failing to hold an IEP team meeting after Student accrued six days of unexcused absences, as required pursuant to the February 14, 2013 settlement agreement?

The settlement agreement in this case does not contain any acknowledgment that the services specified in the agreement would constitute a FAPE for Student after February 14, 2013. Further, the agreement states that the District believed that the placement and services it had offered Student prior to the settlement agreement were designed to provide Student with a FAPE and that the agreement constitutes a compromise between the parties. Simply phrasing the issues as a denial of FAPE is not enough to invoke the *Pedraza* exception, the parties must have intended that the services and placement in the agreement would constitute a FAPE for Student. Therefore, the settlement does not fall under the limited *Pedraza* exception to the general rule that OAH does not have jurisdiction to enforce the terms of the settlement between the parties.

While Student may allege that he required certain services and placement which may have been listed in a settlement agreement to receive a FAPE and these claims would fall under the jurisdiction of OAH, Student cannot raise these claims in the context of the District's failure to implement the terms of a settlement agreement.

#### ORDER

The District's motion to dismiss is granted as to Issues 6, 7, 8, 10A, 10B, and 10C as listed on the Order After Prehearing Conference. The matter will proceed as scheduled as to the remaining issues.

IT IS SO ORDERED.

Dated: December 5, 2013

/s/

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MARGARET BROUSSARD  
Administrative Law Judge  
Office of Administrative Hearings

