

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BAKERSFIELD CITY SCHOOL
DISTRICT; GREENFIELD UNION
SCHOOL DISTRICT; KERN COUNTY
SUPERINTENDENT OF SCHOOLS.

OAH CASE NO. 2014040234

ORDER DENYING IN PART AND
GRANTING IN PART BAKERSFIELD'S
MOTION TO DISMISS

On April 2, 2014, Student filed a request for due process hearing (complaint) against respondents Bakersfield City School District (Bakersfield), Greenfield Union School District and Kern County Superintendent of Schools.

On April 18, 2014, Bakersfield filed a Motion to Dismiss Student's complaint as to it. Bakersfield contends that the complaint should be dismissed because Student is attempting through the complaint to enforce a May 30, 2013 settlement agreement between the parties. Bakersfield contends that enforcement of the agreement is outside the jurisdiction of the Office of Administrative Hearings.

Student has not filed an opposition or other response to Bakersfield's 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. (*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.)

However, in the case of *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541 (*Pedraza*), the United States District Court for the Northern District of California clarified 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. The court distinguished alleged violations of FAPE based on a failure to implement the agreement from alleged breaches of a settlement agreement, finding that the latter should be addressed by the California Department of Education's compliance complaint procedure, while the former is under the jurisdiction of OAH.

DISCUSSION

Student's complaint is somewhat confusing. However, it appears to contain two separate sections alleging violations of his right to a FAPE. On page three of his complaint (which is numbered as the third page one of the document), Student alleges that the "districts," including Bakersfield, denied him a FAPE by failing to implement all the provisions of an individualized education program (IEP) dated October 15, 2013, and by failing to implement the terms of a May 30, 2013 settlement agreement, to which Student and Bakersfield were the only parties. Student specifically alleges that he was denied a FAPE by the failure to: (1) provide him with compensatory speech time; (2) conduct a comprehensive occupational therapy assessment; (3) provide monthly progress reports; and (4) provide Student's parent with an interpreter and to interpret documents from English to Spanish.

In this first section of allegations, Student specifically alleges that Bakersfield denied him a FAPE by failing to implement the foregoing four aspects of the May 30, 2013 settlement agreement. Although Bakersfield is correct that OAH does not have jurisdiction to enforce a settlement agreement, under *Pedraza* OAH does have jurisdiction over claims that a student was denied a FAPE by a school district's failure to implement some or all of the provisions of the agreement. OAH therefore has jurisdiction over the first four allegations of Student's complaint.

The second set of allegations in Student's complaint begins on page five (numbered as the fifth page one). Of the three allegations listed, issues one and three pertain to Bakersfield. In issue one, Student contends that Bakersfield denied Student a FAPE from May 30, 2013, to the present by failing to timely assess him in the area of occupational therapy. Student alleges that the occupational therapist admitted that her assessment was not

comprehensive. In issue three, Student contends that Bakersfield denied Student's parent the right to participate in Student's education by failing to translate Student's IEP's into Spanish.

In paragraph 5(j) of the May 30, 2013 settlement agreement between Student and Bakersfield, Bakersfield agreed to conduct a comprehensive occupational therapy assessment of Student and hold an IEP team meeting to discuss the assessment by October 19, 2013. In paragraph 4 of the agreement, Student, through his parent, waived all issues pertaining to his education prior to the date of the agreement. This paragraph states that Student was not waiving any claims arising after the date of the agreement.

Since issue one specifically makes allegations regarding the occupational therapy assessment, which was not conducted until after the execution of the settlement agreement, issue one is not barred. In the settlement agreement, Student did not waive his rights to challenge the assessment.

In issue three, Student does not specify the time frame during which he contends Bakersfield failed to translate his IEP's into Spanish. To the extent Student intended to include the period up to May 30, 2013, any alleged failures to include Student's parent in the IEP process, including translation of IEP's, were waived by Student in the settlement agreement. Therefore, Bakersfield's motion to dismiss is granted as to issue three for the time period up to May 30, 2013. However, any issues pertaining to alleged failures by Bakersfield to translate the IEP's after May 30, 2013, are not covered by the agreement. Bakersfield's motion to dismiss issue three is denied as to any failure to translate Student's IEP's after the date of the agreement.

ORDER

1. Bakersfield's motion to dismiss the first four issues of Student's complaint listed on page three of the complaint is denied.
2. Bakersfield's motion to dismiss issue one on page five of the complaint is denied.
3. Bakersfield's motion to dismiss issue three on page six of the complaint is granted as to any time prior to May 30, 2013, and denied as to the period May 30, 2013, to the present.

DATE: April 22, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings