BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH CASE NO. 2014011015
v.	ORDER (1) DENYING DISTRICT'S MOTION TO DISMISS, AND (2) GRANTING STUDENT'S MOTION FOR STAY PUT.
RIM OF THE WORLD UNIFIED SCHOOL DISTRICT.	

On January 28, 2014, Parent on behalf of Student filed a due process hearing request (complaint) naming the Rim of the World Unified School District (District).

On January 31, 2014, Student filed a motion for stay put.

On February 11, 2014, District filed a motion to dismiss Student's complaint and an opposition to Student's motion for stay put. On February 11, 2014, Student filed an opposition to the motion to dismiss and a response to District's opposition to stay put.

District's Motion to Dismiss

Student is a high school student eligible for special education and services. Her complaint alleges that on November 4, 2013, Student and District entered into a settlement agreement (Settlement Agreement) that changed delivery of specialized academic services under her June 5, 2013 individualized education program (IEP) from 50 minutes per day of one-to-one instruction during seventh period to 50 minutes per day of small group instruction. However, the small group instruction agreed upon in the Settlement Agreement was never implemented, and on January 17, 2014, District stopped providing one-on-one instruction. Student alleges that she has been denied a free appropriate public education (FAPE) from January 17, 2014, as she has not received any specialized academic instruction whatsoever since that date. As stay put, Student requests 50 minutes of daily one-on-one instruction during seventh period as provided for in her June 5, 2013 IEP.

District moves for dismissal of Student's complaint, asserting that the complaint seeks enforcement of the Settlement Agreement, which is beyond the jurisdiction of the Office of Administrative Hearings (OAH).

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).) In *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 held that the Office of Administrative Hearings (OAH) has jurisdiction to adjudicate claims alleging denial of a FAPE as a result of violation of a settlement agreement, as opposed to "merely a breach" of the settlement agreement that should otherwise be addressed by the California Department of Education's compliance complaint procedure.

Here, Student's complaint doe not seek to enforce the Settlement Agreement. Rather, Student alleges that by failing to provide Student with specialized academic instruction, whether under the current IEP or the Settlement Agreement, District has denied Student a FAPE. As explained in *Pedraza*, an administrative determination of whether the breach of a settlement agreement ultimately resulted in a denial of a FAPE goes beyond mere enforcement of that agreement. Accordingly, District's motion to dismiss Student's complaint for lack of jurisdiction is denied.

Student's Motion for Stay Put

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006)[1]; Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's IEP, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs," as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Student's complaint alleges that the Settlement Agreement, and the IEP amendment provided for in that agreement, was never implemented, and that the June 5, 2013 IEP was the last agreed upon and implemented IEP. A copy of the June 5, 2013 IEP is attached to the complaint, but Student has not submitted a sworn declaration with her stay put motion to establish the facts as alleged, or to authenticate the documents attached to her complaint. Nonetheless, District has filed opposition to issuance of a stay put order based solely upon its argument that OAH lacks jurisdiction in this proceeding, and no challenge was raised to the accuracy of facts or documents as presented by Student. In fact, District also filed a copy of the Settlement Agreement to support its argument that Student's daily instruction was modified by that agreement. Therefore, the facts and documents referenced in Student's complaint and moving papers will be taken as true for purposes of this stay put motion.

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[1] All references to the Code of Federal Regulations are to the 2006 edition, unless otherwise indicated.

On the facts presented, the Settlement Agreement provisions regarding the change in delivery of specialized academic instruction, from one-on-one to small group, were never implemented. Therefore, the June 5, 2013 IEP is Student's last agreed upon and implemented IEP for stay put purposes. Student's motion for District to provide 50 minutes of one-on-one specialized academic instruction to Student during seventh period, in accordance with her June 5, 2013 IEP, is granted.

ORDER

1. District's motion to dismiss Student's complaint is denied.

2. Student's motion for stay put is granted.

3. District shall immediately begin providing Student with 50 minutes per day of one-on-one specialized academic instruction by a credentialed special education teacher during the seventh period of Student's school day. District shall continue to provide this service as ordered until a post-hearing decision is issued in this proceeding, or until and unless this proceeding is dismissed by OAH.

IT IS SO ORDERED.

DATE: February 12, 2014

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings