BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LONG BEACH UNIFIED SCHOOL DISTRICT.	OAH Case No. 2016040382 ORDER DENYING MOTION TO DISMISS

On April 1, 2016, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Long Beach Unified School District.

On April 11, 2016, District filed a Motion to Dismiss, alleging that OAH lacks jurisdiction.

On April 14, 2016, Student filed an opposition to the motion.

On April 18, 2016, District filed a response to Student's opposition.

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. (*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 *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603 (*Pedraza*), the District Court 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

In her complaint, Student alleges that she has been deprived of a free appropriate public education because District failed to implement a May 2015 settlement agreement between the parties.[1]

Both sides have produced a copy of the May 5, 2015 settlement agreement. The agreement requires District to provide services for school year 2015-2016 in occupational therapy (two 30 minute sessions per week), vision itinerant services (one 30 minute session per week), and speech and language services (two 30 minute individual sessions per month and two 30 minute group sessions per month). The agreement also provides that District shall provide compensatory education in the amount of 36 hours in occupational therapy, 36 hours in visual itinerant services, and 36 hours in speech and language. Student contends that District violated the settlement agreement by failing to provide appropriate services, including compensatory education, as the District failed to adopt any goals and baselines for the services.

Student's allegations fall within the jurisdiction of OAH as the allegations involve the denial of a free appropriate public education. In this case, Student explicitly alleges that District's failure to provide the services agreed upon in the May 2015 settlement agreement has denied Student a FAPE. Thus, OAH has jurisdiction.

[1] The May 5, 2015 settlement was entered into during a mediation session and settled OAH Cases Number 2015020736, 2015010656, and 2015030395.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

DATE: April 19, 2016

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings