BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2013040364 ORDER DENYING MOTION TO DISMISS DISTRICT'S COMPLAINT

On April 08, 2013, West Contra Costa Unified School District (District) filed a Request for Mediation and Due Process Hearing (complaint), naming Student as the respondent.

On April 19, 2013, Student filed a motion to dismiss the complaint. District filed opposition to the motion on April 22, 2013.

Student contends in his motion that OAH lacks jurisdiction over the subject matter because District's complaint raises allegations seeking enforcement of a Settlement Agreement dated May 25, 2010. Student also contends that the complaint is a duplicate of a prior complaint filed by District in OAH Case No. 2013030286, dismissed for lack of jurisdiction by order dated April 5, 2013.

District contends in its opposition that unlike the previous complaint dismissed by OAH, the instant complaint articulates its right to assess Student based upon a separate and distinct legal theory which was not resolved as part of the prior settlement agreement and over which OAH retains jurisdiction. District's opposition includes a copy of the May 26, 2010 Agreement.

Based upon the applicable law and discussion below Student's motion is denied.

APPLICABLE LAW

Petitioners 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); see also Ed. Code, § 56501, subd. (a).) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

OAH's 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 school 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 claims alleging the school district's failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and 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, § 4650), 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, however, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 U.S. Dist. Lexis 26541, the United States District Court for the Northern District of California held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

While both the *Wyner* and *Pedraza* cases applied to alleged breaches of settlements by the education agencies, there is nothing to suggest that the jurisdictional limitations set out in those cases would not apply to an alleged breach of a settlement agreement by a student, or his or her parents. The question in the instant motion is whether District is seeking enforcement of the prior settlement agreement or is asserting a statutory right to reassess Student without parental consent.

Reassessment of a student eligible for special education must be conducted at least every three years, or more frequently if the local educational agency determines conditions warrant reassessment, or if a reassessment is requested by the student's teacher or parent. (20 U.S.C. § 1414(a)(2)(A); Ed. Code, § 56381, subds. (a)(1), (2).)

A reassessment requires parental consent. (20 U.S.C. § 1414(c)(3); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f).) To obtain consent, a school district must develop and propose a reassessment plan. (20 U.S.C. § 1414(b)(1); Ed. Code, §§ 56321, subd. (a), 56381, subd. (f).) If the parents do not consent to the plan, the district can conduct the reassessment only by showing at a due process hearing that it needs to reassess the student and is lawfully entitled to do so. (20 U.S.C. § 1414(a)(1)(D); 34 C.F.R. § 300.300(c) (2006); Ed. Code, §§ 56321, subd. (c), 56381, subd. (f), 56501, subd, (a)(3), 56506, subd. (e).) The District must propose a written assessment plan and include notice of the procedural safeguards under the

Individuals with Disabilities Education Act (IDEA) and state law. (20 U.S.C § 1414(a)(1)(D)(ii); Ed. Code, §§ 56321, 56329, 56381.)

DISCUSSION

District's most recent complaint alleges one issue, i.e. whether District may complete its triennial assessments without parental consent. Nowhere does the complaint request enforcement of the May 25, 2010 Agreement. Rather, the complaint alleges Parents have refused to produce Student for reassessment unless District complies with their conditions allowing them to be present during Student's assessments. Here, District seeks an order compelling parents to present Student for reassessments without parental conditions impeding District's statutory duty to conduct the reassessments. In contrast to OAH Case No. 2013030286, dismissed on April 5, 2013, the current complaint is unlike the previous complaint because District does not seek enforcement of the Settlement Agreement but rather District seeks a determination by OAH that it may reassess Student as required by statute and before Student's re-enrollment in the District for the 2013-2014 school year, without parental consent.

Pursuant to the authority discussed above, OAH does have jurisdiction to entertain District's claims. Accordingly Student's motion is denied.

ORDER

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

IT IS SO ORDERED.

Dated: April 26, 2013

/s/
STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings