

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015060441

ORDER DENYING MOTION TO
DISMISS

On May 18, 2015, Student filed with the Office of Administrative Hearings a Request for Due Process Hearing (complaint), naming Los Angeles Unified School District. The complaint contained a single issue which is whether the District failed to provide Student a free appropriate public education by its breach of the November 2014 settlement agreement. In reading the complaint, Student is actually alleging that District failed to provide Student a FAPE by its failure to properly provide services called for in the settlement agreement. For instance, District permitted Student to miss most of the instructional day by allowing him to sit on a concrete floor and not utilize behavioral interventions, which were called for in Student's IEP.

On June 11, 2015, District filed a Motion to Dismiss, alleging that OAH does not have jurisdiction because the issue is to enforce a breach of the settlement agreement.

On June 16, 2015, Student filed an opposition.

APPLICABLE LAW AND DISCUSSION

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial

responsibility].) 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.)

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, 2007 WL 949063, 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.

Here, Student is alleging that Student has been denied a FAPE by District failing to provide, or improperly providing, the supports and services as outlined in the November 2014 agreement.¹ Because the issue is whether or not the District appropriately provided the supports and services called for in the November 2014 settlement agreement, OAH retains jurisdiction as the issue is actually whether District provided Student with a FAPE.

ORDER

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

¹ The agreement stated that Student would receive the support and services outlined in the April 24, 2014 IEP through June 4, 2015.

IT IS SO ORDERED.

DATE: June 22, 2015

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings