

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT

v.

LYNWOOD UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021100757

ORDER DENYING MOTION TO DISMISS BASED UPON
SETTLEMENT AGREEMENT

NOVEMBER 12, 2021

On October 26, 2021, Student filed a Request for Due Process Hearing, with the Office of Administrative Hearings, naming Lynwood Unified School District. The Request for Due Process is referred to as a Complaint. The Office of Administrative Hearings is referred to as OAH.

On November 5, 2021, Lynwood filed a Motion to Dismiss. OAH has not received a response from Student.

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.)

This limited jurisdiction does not include claims alleging a school district’s failure to comply with a settlement agreement. (*Id.* at p. 1030.) In the *Wyner* case, the parties reached a settlement agreement in which the district agreed to provide certain services during the course of a due process hearing. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student filed another due process hearing alleging the district did not comply with the settlement agreement in the first case. A hearing officer determined that the issues alleging the failure to comply with the settlement agreement in the first case were beyond its jurisdiction. This ruling was upheld on appeal. The decision in *Wyner* held that “the proper avenue to enforce Special Education Hearing Office 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 Special Education Hearing Office order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

DISCUSSION

Student states in the complaint that Student previously filed a due process complaint in September 2021, claiming Lynwood failed to provide Student with a free

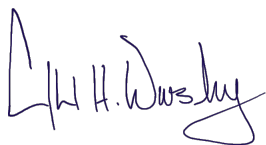
appropriate public education, called a FAPE. Student states this prior complaint was settled, and Student received independent educational evaluations, contingent compensation for academics and counseling, and a provisional aide.

Lynwood's motion to dismiss asserts that Student is improperly seeking to have OAH enforce the parties' September 20, 2021 settlement agreement. Lynwood's motion did not include a copy of the settlement agreement. Lynwood states the settlement agreement provided for a provisional one-to-one aide, was not stay put, and was separate from Student's current or future FAPE offers.

Here, though, Student states that Lynwood convened an individualized education program meeting on October 8, 2021. As part of his program, Student was entitled to a full-time school district aide. Student asserts that he has had an aide with him for only two days and that the failure to implement the October 2021 IEP was material and denied Student a FAPE. Student makes no claim that Lynwood has breached the September 2021 settlement agreement. Student's complaint does not ask OAH to enforce the settlement agreement or to determine if Lynwood is in breach.

The motion to dismiss is denied.

IT IS SO ORDERED.

A handwritten signature in blue ink, appearing to read "Clifford H. Woosley".

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings