BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SALINAS UNION HIGH SCHOOL DISTRICT, MILLENNIUM CHARTER HIGH SCHOOL, AND MONTEREY COUNTY OFFICE OF EDUCATION.	OAH Case No. 2018031167 ORDER DENYING MOTION TO ENFORCE SETTLEMENT AGREEMENT AND STAY PUT

On March 23, 2018, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming Salinas Union High School District, Millennium Charter High School, and Monterey County Office of Education. On April 16, 2018, OAH dismissed the complaint based on Student's request. On July 3, 2018, Student filed a motion to enforce the settlement agreement and a motion for stay put.[1] Millennium opposed the motions. Neither Salinas nor Monterey responded.

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

[1] Student's motion did not include the OAH case number and only referenced Millennium and Monterey. However, Student clarified with OAH that the motion was in reference to OAH Case No. 2018031167.

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.)

A special education student is entitled to remain in his or her current educational placement pending the completion of due process hearing procedures unless the parties agree otherwise. (20 U.S.C. § 1415(j); Ed. Code, §§ 56505, subd. (d), 48915.5.) Stay put operates automatically upon due process filing. (See *Casey K. v. St. Anne Community High School District No. 302* (7th Cir. 1998) 400 F.3d 508, 511.) For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP) which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

DISCUSSION

In the present matter, Student expressly asks that OAH inforce a settlement agreement between Student, Millennium, and Monterey. OAH does not have jurisdiction to enforce settlement agreements. Further, Student asks that OAH grant his motion for stay put at Millennium. Student does not provide any legal authority that OAH has jurisdiction to order stay put in a case that has been dismissed. Millennium persuasively argues in its opposition that for OAH to order stay put there must be a pending due process hearing. In this case the underlying due process hearing was dismissed therefore OAH cannot issue a stay put order.

ORDER

Student's motion to enforce the settlement agreement and motion for stay put are denied.

DATE: July 11, 2018

Linda Johnson

LINDA JOHNSON
Administrative Law Judge
Office of Administrative Hearings