BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENT ON BEHALF OF STUDENT, v. FRESNO UNIFIED SCHOOL DISTRICT,	OAH CASE NO. 2012100242
FRESNO UNIFIED SCHOOL DISTRICT, v. PARENT ON BEHALF OF STUDENT.	OAH CASE NO. 2012100291 ORDER FINDING JURISDICTION TO ADJUDICATE DISTRICT ISSUES G) AND H) AND DENYING STUDENT'S MOTION TO DISMISS

Student filed a request for due process hearing (complaint) on October 3, 2012, in Office of Administrative Hearings (OAH) case number 2012100242, naming Fresno Unified School District (District). On October 5, 2012, District filed a complaint in OAH case number 2012100291, naming Student. On October 30, 2012, OAH consolidated the two cases. The due process hearing is currently scheduled for August 26 through 29, 2013.

On June 7, 2013, a prehearing conference (PHC) was convened by the undersigned Administrative Law Judge (ALJ) to discuss the hearing. Student's issues for hearing were labeled issues a) through d). District's issues for hearing were labeled issues e) through i). District's issues are as follows:

e) May District conduct Student's triennial assessment in all areas of need identified in the October 25, 2011 assessment plan without parental consent?

f) May District discontinue Student's specialized academic instruction, identified in the October 25, 2011 IEP, and provided as a regional occupation program (ROP) class at Duncan Polytechnic High School, because District has determined Student receives no educational benefit?

g) Did District comply with ALJ Hohensee's order issued in OAH case number 2012010705 by exercising reasonable efforts to perform an independent educational evaluation (IEE) of Student?

h) Did Parent fail to comply with ALJ Hohensee's order issued in OAH case number 2012010705 by refusing to make Student reasonably available for an IEE?

i) Did District's October 25, 2011 IEP and September 26, 2012 prior written notice offer Student a FAPE in the LRE and, if so, may the offer be implemented without parental consent?

During the PHC, while reviewing the parties' issues, the undersigned ALJ noted that District issues g) and h) seemed to request compliance determinations that are outside OAH's jurisdiction. The undersigned ordered District to submit a brief to explain why it believes OAH has jurisdiction to determine issues g) and h).[1]

District timely filed its brief on June 12, 2013. Student also filed a brief in opposition requesting that OAH dismiss District issues g) and h) for lack of jurisdiction.[2]

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), 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 [hereafter *Wyner*].)

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

---

[1] District raises five issues against Student in its complaint. Only two issues are the subject of this order and the remaining District issues e), f), and i), are not discussed. Student's issues a) through d) are also not subject of this order and are not discussed.

[2] Student's motion refers to these issues as Issues 3 and 4.

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.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541 the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a FAPE 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 the present matter, District issues g) and h) appear to request that OAH make a compliance determination to enforce its own order. Such a determination would be outside OAH jurisdiction. However, District asserts that that this is not the case. Instead, District is asking for a determination regarding the effect of District's compliance and Parent's non-compliance with a prior judicial order in order to determine whether District met its obligation to provide Student a FAPE. Specifically, District seeks a determination whether it and Parent complied with OAH's judicial order and if District is relieved of its obligation to provide student a FAPE when Parent fails to make Student available for an ordered assessment. Pursuant to the authority discussed above, OAH does have jurisdiction to entertain District's claims in issue g) and h) for purposes of determining whether District provided Student a FAPE.

ORDER

Student's motion to dismiss District issues g) and h) is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: July 8, 2013

/s/

TROY K. TAIRA
Administrative Law Judge
Office of Administrative Hearings