BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020120161

ORDER DISMISSING ISSUE 1 OF DUE PROCESS COMPLAINT AND DISMISSING ETIWANDA SCHOOL DISTRICT AS A PARTY

JUNE 9, 2021

On June 8, 2021, Administrative Law Judge Adrienne L. Krikorian, Office of Administrative Hearings, called OAH, presided over the first day of the due process hearing in this matter. Attorney Sheila Bayne represented Student. Parent was also present. Attorney Sundee Johnson represented Etiwanda School District and Chaffey Joint Union High School District. Representatives of Etiwanda, Chaffey and the West End Special Education Local Plan Area were also present.

The ALJ reviewed the issues for hearing, noting that on December 24, 2020, OAH issued an Order granting Chaffey's motion to dismiss Student's Issue 6 in the complaint.

In the same December 24, 2020 Order, OAH denied Etiwanda's motion to dismiss Issue 1 of the complaint. The Order stated: "Whether Etiwanda's breach of the settlement agreement denied Student a FAPE, and whether Etiwanda's affirmative defense that a claim arising from such a breach was waived, are issues within OAH jurisdiction."

Specifically, Issue 1 was phrased by the parties at the prehearing conference, called PHC, as follows: "Did Etiwanda deny Student a free appropriate public education, called a FAPE, by failing to ensure that Chaffey was aware of Student's transition individualized education program, called a transition IEP, prior to Student's transfer to Chaffey at the start of the 2019 to 2020 school year?"

Following discussion by the parties and ALJ, the ALJ ordered the parties to brief as a preliminary matter whether OAH has jurisdiction over Issue 1 against Etiwanda by providing an offer of proof regarding several foundational facts. Student objected to revisiting the issue of jurisdiction based upon the December 24, 2020 Order. However, the December 24, 2020 Order, which was issued within the first month of this case, left open whether evidence presented at hearing might be determinative of OAH jurisdiction over Issue 1. Accordingly, Student's objection is overruled.

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW; 2007 WL 949603), the United States District Court for the Northern District of California noted that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a contractual breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of FAPE. 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, the gravamen of Student's Issue 1 is that Etiwanda had a duty, as an element of FAPE, to "ensure" that Chaffey, the school district to which Student would matriculate to high school, knew about Student's alleged "transition" IEP, which purportedly included or incorporated terms from a June 7, 2019 settlement agreement between Student and Etiwanda, referred to as FSA. (See, Decl. E. Freer, Exh. A.) The parties do not dispute that Student's last agreed upon and implemented IEP was dated November 27, 2018, as amended in December 2018 and April 2019. Parent did not sign any subsequent Etiwanda IEP, including any new IEP that purported to serve as a "transition" IEP.

The FSA in relevant part required Etiwanda to amend Student's "transition" IEP to include provisions relating to Student's placement in general education classrooms and the provision of specialized academic instruction, and provision of assistive technology in the form of an iPad. (Decl. Freer, Ex. A, Par. 4). The parties expressly agreed that Parent's signature on the FSA constituted Parent's consent to an IEP amendment to the November 27, 2018, as modified by Paragraph 4 of the FSA. (*Id.*) The FSA included a confidentiality clause, except "as necessary for implementation and enforcement." (Decl. Freer, Exh. A, Par. 15.)

Paragraph 4 of the FSA constituted a signed amendment to the November 27, 2018 IEP as previously amended. Therefore, OAH has jurisdiction over the FSA, to the extent the parties intended specific provisions of the FSA to constitute a FAPE as part of Student's November 27, 2018 IEP as amended.

Student attended middle school within Etiwanda at all relevant times. Under Education Code section 48200, a school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district, subject to several

specified exceptions. (*Union School District v. Smith* (9th Cir. 1994) 15 F.3d 1519, 1525, fn. 1 [Ed. Code § 48200 determines the local educational agency responsible for providing a special education program].) Etiwanda was the local educational agency responsible for Student's education until Student matriculated to high school at the end of June 2019 or moved out of Etiwanda's jurisdiction. (34 C.F.R. subpart 300.28). Student provided no offer of proof to the contrary. As such, Etiwanda had a duty as the local educational agency to provide Student a FAPE from the time of the FSA through June 27, 2019. In that regard, Etiwanda should have taken steps to verify that Chaffey was aware of the relevant portions of the FSA that impacted Student's IEP and right to FAPE, even if Etiwanda did not provide Chaffey with the entire FSA. Etiwanda acknowledged that Etiwanda did not routinely share settlement agreements between Etiwanda and parents and students with other school districts. Etiwanda did not provide a copy of the FSA to Chaffey. (Decl. K. Whelan, par. 13 and 14; Decl. E. Freer, par. 21)

Etiwanda is an elementary school district. Student completed eighth grade on June 27, 2019. Etiwanda's responsibility as Student's local educational agency ended at the close of the 2018-2019 school year on June 27, 2019. Etiwanda was no longer obligated to provide a FAPE to Student after June 27, 2019. Instead, Student matriculated to high school and Chaffey became the local educational agency. Therefore, the only time period for which OAH could find that Etiwanda denied Student a FAPE in Issue 1 would be from June 7, 2019, when the FSA amended Student's educational program, through June 27, 2019.

Even if Etiwanda's failure to notify Chaffey of the IEP amendment amounted to a denial of FAPE from June 7, 2019 through June 27, 2019, the terms of the FSA established that the parties expressly and mutually agreed that Student waived "any and

all legal claims," known or unknown, against Etiwanda "through and including June 30, 2019." Student waived any claim that Etiwanda denied Student a FAPE.

Finally, under *Pedraza, supra*, even if Student contends Etiwanda had a continuing contractual obligation under the FSA, OAH has no jurisdiction over a claim that Etiwanda failed to provide Chaffey with a copy of the FSA after June 27, 2019. Etiwanda's FAPE obligations to Student ended after June 27, 2019. Student's recourse is to seek her remedy for a breach of the FSA through the California Department of Education or a court of competent jurisdiction.

In summary, Etiwanda established by offer of proof that it was not the local educational agency responsible to provide a FAPE to Student after June 27, 2019. Student offered no evidence to the contrary. Student waived claims against Etiwanda through June 30, 2019. (FSA, Par. 11). Because Student has no legal right to bring a FAPE claim against Etiwanda after June 27, 2019 and waived any FAPE claims Student may have had through June 27, 2019, Student's Issue 1 is outside of OAH jurisdiction.

Issue 1 of Student's complaint is dismissed with prejudice. Etiwanda is dismissed as a party to the complaint. The hearing shall proceed as to Chaffey and Issues 2 through 5, and shall resume at 9:30 a.m. on June 10, 2021.

IT IS SO ORDERED

Adrienne L. Krikorian

Adrienne L. Krikorian
Administrative Law Judge
Office of Administrative Hearings