BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

CASTRO VALLEY UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2020010653

ORDER GRANTING, IN PART, AND DENYING, IN PART, MOTION TO DISMISS

MARCH 19, 2020

On January 17, 2020, Student filed a Request for Due Process Hearing, commonly referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Castro Valley Unified School District. Student filed an amended complaint on January 22, 2020.

On March 11, 2020, Castro Valley filed a Partial Motion to Dismiss the amended complaint.

On March 16, 2020, Student provided an oral response to Castro Valley's motion during a prehearing conference. In response to Issue 1 and Cause of Action 1(A), which raise identical issues, Student conceded all claims prior to January 22, 2019 are barred because Student waived them upon execution of the settlement agreement. However, Student argued two reasons the educationally related mental health services (ERMHS) assessment was not barred by the agreement as alleged in Issue 2 and Cause of Action

1(C). Firstly, it occurred in February 2019, after the settlement agreement was executed. Additionally, Student argued the assessment was not adequate, and thereby denied Student a free appropriate public education (FAPE). Therefore, Student asserts Issue two and Cause of Action 1(C) are not barred by the settlement agreement.

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 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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education 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

Student raises four claims against Castro Valley in their Complaint, as follows:

- Issue 1 Did the District continuously misrepresent Student's level of emotional, social and behavioral functioning to Student's parents during the 2018-2019 school year, the 2019 ESY and 2019-2020 school year, thereby denying him FAPE?"
- Cause of Action 1(A)– The district Failed to Provide Student with a procedural FAPE for 2018-2019 School Year, 2019 ESY and 2019-2020 School Year." The District has continuously and intentionally withheld from and misrepresented to Student's parents essential information about his functioning in school environment.
- Issue 2 Did the District fail to provide Student with an appropriate ERMHS assessment and appropriate goals, services and placement, thereby denying him FAPE during the 2018-2019 school year, the 2019 ESY, and the 2019-2020 school year?
- Cause of Action (C) – The district Failed to Provide Student with a procedural FAPE for 2018-2019 School Year, 2019 ESY and 2019-2020 School Year." The District's February 2019 ERMHS assessment was inadequate and inappropriate.
- Issue 3 Are student's parents entitled to reimbursement for the costs they have incurred in placing him at Intermountain, a residential placement facility located in Montana and California-certified NPS?"
- Issue 4 Should the District be ordered to place Student at Intermountain going forward?

Castro Valley, in its Partial Motion to Dismiss, requests that portions of Student's complaint be dismissed because Student released all claims against Castro Valley as of the date of the fully executed agreement, dated January 22, 2019. A copy of the settlement agreement is attached to Castro Valley's Partial Motion to Dismiss.

Student acknowledges in the Complaint that the parties entered into a final settlement agreement on January 22, 2019. However, Student contends the claims in Issue 2 and Cause of Action 1(C) of the above-titled proceeding were not resolved as

part of the settlement agreement. Student asserts the claims in the above-titled proceeding were not merely a breach of the settlement agreement but, rather, a denial of a free appropriate public education.

The settlement agreement states Student settled all educational claims and causes of action against Castro Valley as of January 22, 2019. In exchange for Student's waiver of educational claims and other consideration, Castro Valley promised to reimburse Parent a specific amount for the private assessment conducted by Dr. Schilling.

Student's Issue1 and Cause of Action 1(A) raise the issue of whether Castro Valley intentionally withheld or misrepresented essential information to Parent about Student's functioning in the educational environment. In response to the motion, Student acknowledged claims prior to January 22, 2019 were barred based on the settlement agreement. Therefore, Castro Valley's motion to dismiss Issue 1 and Cause of Action 1(A) is granted for the claims prior to the execution of the settlement agreement on January 22, 2019.

The allegations in Issue 2 and Cause of Action 1(C) relate to a February 2019 ERMHS assessment. Student alleges Castro Valley failed to make the classroom teacher available to the assessor which caused an inadequate assessment. Student contends Castro Valley's conduct denied student a FAPE. Castro Valley argues that it paid for the ERMHS assessment as indicated in the settlement agreement, therefore the issue is moot.

The settlement agreement states Parents would be reimbursed for an assessment performed by Dr. Schilling, but it does not indicate the type of assessment that was done. Therefore, it is unclear from the settlement agreement that Castro Valley paid for the ERMHS assessment to support its contention that the issue is moot. Additionally, Student's allegation that Castro Valley denied Student a FAPE by denying access to Student's teacher is not resolved by the settlement agreement. The settlement agreement does not say that Student is barred from raising any FAPE claims arising from the assessment. Therefore, Castro Valley's motion to dismiss Issue 2 and Cause of Action 1(C) is denied because the settlement agreement does not clearly resolve this issue.

Pursuant to the authority discussed above, OAH does have jurisdiction to entertain these claims. The plain language of the settlement agreement does not resolve the claims relating to Student's Complaint in this case.

Student's statements in Issue 3 and 4 are a requests for reimbursement for costs incurred in placing Student at Intermountain and future placement at Intermountain. These statements are proposed resolutions should Castro Valley be found to have denied Student a FAPE. Since these issues do not raise claims that can be adjudicated by OAH, they are dismissed.

ORDER

Castro Valley's Motion to Dismiss is:

a) partially granted for Issue 1 and Cause of Action 1(A). The claim is limited to the time period after January 22, 2019;

b) denied for Issue 2 and Cause of Action 1(C); and

c) granted for Issues 3 and 4.

DocuSigned by:
Marlo Nisperos
97112E4B27A64FF...

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings