BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

MT. DIABLO UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2023010234

OAH CASE NUMBER 2022120477

ORDER DENYING STUDENT'S MOTION TO PROCEED TO PHASE TWO OF HEARING

MARCH 20, 2023

For the reasons explained below, hearing of this matter will proceed in two phases, as ordered in OAH's prehearing conference held March 13, 2023. All parties must be prepared to proceed on March 21, 2023 with Phase One of the hearing. The parties must also be prepared to proceed on March 21, 2023 with Phase Two of the hearing, following a ruling of the hearing judge on the issues raised in Phase One.

On January 10, 2023, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Mt. Diablo Unified School District, called Mt. Diablo. The Office or Administrative Hearings is referred to as

OAH. OAH subsequently consolidated Student's case with Mt. Diablo's previously filed case.

On March 8, 2023, Mt. Diablo filed a motion to dismiss certain allegations in Student's complaint. Mt. Diablo's motion included a request that OAH dismiss all allegations based on Mt. Diablo's conduct prior to September 1, 2022, because Student waived all such claims as part of an October 27, 2021 settlement agreement between Student and Mt. Diablo. Mt. Diablo also requested OAH dismiss any Student claims that Mt. Diablo breached terms of the settlement agreement that required Mt. Diablo to reimburse Parent for certain expenses, on grounds that claims for breach of a settlement agreement are not within OAH's jurisdiction, but are instead handled by the California Department of Education, which had addressed the claims.

On March 13, 2023, OAH held a prehearing conference in this matter, and subsequently issued a prehearing conference order holding that OAH would conduct the hearing of this matter in two phases. In Phase One, the parties would present evidence and witnesses on issues related to the October 27, 2021 settlement agreement, including whether the agreement barred some or all of Student's claims arising before September 1, 2022, and whether OAH had jurisdiction to hear claims that Mt. Diablo breached the settlement agreement by failing to reimburse Parent certain expenses. Following a ruling by the hearing judge on the issues raised in Phase One, the hearing would immediately move to Phase Two, concerning Student's and Mt. Diablo's claims within OAH's jurisdiction and not barred by the October 27, 2021 settlement agreement.

On March 14, 2023, Student filed a Motion Request to Move Case Forward to Phase Two. The motion attached a January 4, 2023 notice from the California Department of Education, called CDE, indicating CDE would not proceed with a compliance investigation of Student's claims that Mt. Diablo had failed to provide video

samples for feeding Student to therapists and parents as required by Student's IEP, because those claims were already pending in a due process hearing before OAH. CDE's notice explained that CDE must set aside complaints filed with CDE that a district failed to comply with individualized education program requirements set forth in Code of Federal Regulations, Title 34, Sections 300. 320 to 300.324, if such claims are being addressed by OAH. Based on CDE's January 4, 2023 notice, Student argues that OAH has jurisdiction to hear any issues regarding a settlement agreement, and that Phase One of the hearing is therefore unnecessary.

Student's argument is not persuasive. CDE's notice does not convey jurisdiction to OAH. It indicates only that where OAH has jurisdiction over an issue involving compliance with Code of Federal Regulations, Title 34, Sections 300. 320 to 300.324, and is exercising that jurisdiction to hear a matter, CDE must defer to OAH's decision and will not proceed with a non-compliance complaint. CDE's January 4, 2023 notice does not mention the October 27, 2021 settlement agreement, or any of the issued to be addressed in Phase One of the hearing of this matter. Nothing in CDE's notice answers the questions of whether Student's claims predating September 1, 2022 are barred by the October 27, 2023 settlement agreement, or whether OAH has jurisdiction to hear claims that Mt. Diablo breached the agreement by failing to reimburse Parent.

ORDER

1. Student's motion to proceed directly to Phase Two of the hearing of this matter is denied.
2. All parties must be prepared to proceed on March 21, 2023 with Phase One of the hearing, as set forth in OAH's prehearing conference order dated March 14, 2023. The parties must also be prepared to proceed on

March 21, 2023 with Phase Two of the hearing, following a ruling of the hearing judge on the issues raised in Phase One.

IT IS SO ORDERED.



Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings