BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

FOLSOM-CORDOVA UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022080541

OAH CASE NUMBER 2022080167

ORDER GRANTING IN PART MOTION TO DISMISS AND MOTION TO STRIKE BASED UPON SETTLEMENT AGREEMENT

SEPTEMBER 16, 2022

On August 4, 2022, Folsom-Cordova Unified School District filed with the Office of Administrative Hearings, a Request for Due Process Hearing in OAH case number 2022080167, District's Case, naming Student. The Office of Administrative Hearings is referred to as OAH. District's Case seeks an Order from OAH permitting it to implement the May 2022 individualized education program, or IEP, offer of a free appropriate public education, or FAPE, without Parent's consent. Folsom-Cordova Unified alleges that the May 2022 IEP amended Student's March 24, 2022 Annual IEP.

On August 18, 2022, Student filed a Request for Due Process Hearing, called Student's complaint, in OAH case number 2022080541, referred to as Student's Case, naming Folsom-Cordova Unified. On August 19, 2022, OAH scheduled the hearing in Student's case for October 4 through 6, 2022.

The complaint alleges that in August 2021 the parties entered into a settlement agreement, regarding the dispute revolving around a February 2020 IEP offer to place Student in a moderate/severe special day classroom. To resolve the dispute, Folsom-Cordova Unified agreed to provide Student with related services and a mild/moderate placement at the District's Peter Shield Elementary School for the 2021-2022 school year and to convene an IEP team meeting in Spring 2022 to develop a new IEP for Student for the 2022-2023 school year. In exchange, Student agreed to waive all educational claims through August 16, 2021 and not to bring any claims pertaining to the programming provided to Student during the 2021-2022 school year. The complaint alleges that Folsom-Cordova Unified held an IEP team meeting in March 2022 to develop a new program for Student for the 2022-2023 school year. Student alleges that the March 2022 offer of special education and related services is not FAPE. The complaint alleges that Student agreed to waive all claims until the end of the 2021-2022 school year, but because the March 2022 IEP offered FAPE for the 2022-2023 school year those claims are not barred.

Student's complaint alleges nine issues, some with subparts, the first eight of which include allegations that the March 2022 IEP offer of special education and related services was not FAPE. In addition, issues 1, 2, 4, 5 and 7, contain claims or allegations that Folsom-Cordova Unified denied Student a FAPE based on conduct which occurred during the 2020-2021 school year distinct from the March 2022 IEP offer. Issue 1 alleges that Folsom-Cordova Unified denied Student a FAPE by failing to conduct a functional

behavior assessment and offer a behavior intervention plan during the 2021-2022 school year. Issue 2 alleges that Folsom-Cordova Unified denied Student a FAPE during the 2021-2022 school year by failing to offer a one-to-one aide for the 2021-2022 school year. Issue 4 alleges that District denied Student a FAPE during the 2021-2022 school year by failing to offer appropriate goals. Issue 5 alleges that District denied Student a FAPE by failing to address regression during the 2021-2022 school year. Issue 7 alleges that Folsom Cordova Unified denied Student a FAPE by failing to place Student with neurotypical peers to the maximum extent possible during the 2021-2022 school year. The complaint also seeks remedies going back as far as the 2019-2020 school year.

On August 22, 2022, OAH consolidated District's Case and Student's Case, designating Student's Case as primary and vacating the August 2022 hearing dates in District's Case.

On September 8, 2022, Folsom Cordova Unified filed a motion to dismiss all issues, sub-issues and all proposed resolutions in Student's complaint which refer to alleged acts/omissions by Folsom-Cordova Unified prior to the end of the 2021-2022 school year and stem from the negotiated IEP for the 2021-2022 school year on the grounds they have been waived by Student in the August 16, 2021 Settlement Agreement. A copy of the settlement agreement is attached to the motion to dismiss. Folsom-Cordova Unified argues that the August 16, 2021 bars any claims through the date of the settlement as well as any claims pertaining to the programming for the 2021-2022 school year through the term of the Agreement, June 30, 2022. Folsom-Cordova Unified argues that Student's issues 1, 5 and 7, on their face, relate to allegations involving the 2021-2022 school year which have been contractually waived by Student. It also claims that issues 2 and 4 improperly contain allegations/sub-issues

concerning its conduct during the 2021-2022 school year, and that Student's proposed resolutions impermissibly seek remedies involving the 2019-2020, 2020-2021 and/or 2021-2022 school years and/or extended school years 2020 and 2021 – all of which issues and proposed resolutions were waived by Parent in the Agreement.

On September 13, 2022, Student filed opposition to the motion, and in the alternative, requests leave to amend the complaint. Student argues his claims are not entirely barred because the March 24, 2022 IEP offered FAPE for the 2022-2023 school year through March 24, 2023, which is beyond the settlement waiver period which ended on June 30, 2022. Student concedes that the heading in issues 1, 5 and 7, the last paragraph of issue 2, and the first paragraph of issue 4, are confusing because they erroneously refer to the 2021-2022 school year. Student also concedes that the proposed resolutions should be amended to refer only to the 2022-2023 school year.

DISCUSSION

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 School Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

When a party files a due process case based on claims that were waived as part of a settlement agreement, OAH will dismiss the case. (See, e.g., *Student v. Glendora Unified School District* (2020) OAH Case No. 20201010057; *Student v. Dixie Elementary School District* (2014) OAH Case No. 2014071198; *Capistrano Unified School District v. Parent* (2011) OAH Case No. 2011060748.)

Folsom-Cordova Unified's motion to dismiss is not precise and is mostly vague as to the scope of the specific issues it seeks to have OAH dismiss. There is only one place in its papers where it addresses specific issues. At page four, it mentions issues 1, 2, 4, 5 and 7; however, nowhere does it address issues 3, 6, 8 or 9. Nor does it specifically argue that Student's claims arising out of the March 2022 IEP or any amendment to that IEP should be dismissed. Accordingly, OAH interprets the motion to dismiss as limited to issues 1, 2, 4, 5 and 7, but excluding claims arising out of the March 2022 IEP or any amendment to that IEP as it pertains to those issues.

On its face, Student has alleged claims based on conduct which predate the June 30, 2022 term of the Agreement which were resolved by the August 2021 Settlement Agreement. Specifically, the complaint states that Student waived all claims through August 16, 2021 and that Parent agreed not to bring any claims pertaining to the programming provided to Student during the 2021-2022 school year. Student also specifically states in multiple places in his complaint that Student waived all claims through the end of the 2021-2022 school year. This is consistent with the Settlement Agreement which states Student waived and released Folsom-Cordova Unified from any and all "past, present, and future" claims related to District's provision of education to Student during the term of the Agreement, which was through June 30, 2022. The Agreement also states that Student settled all claims related to "Student's special education and FAPE, whether known or unknown, regarding Student through the Effective Date of this Agreement" which was August 16, 2021. Student also agreed not to make any claims or pursue any dispute related to Student's progress on goals, services, and placement during the 2021-2022 school year which Folsom Cordova Unified agreed to provide as part of the Agreement.

Notably, Student concedes his complaint is confusing and should not have included claims pertaining to the period prior June 30, 2022. Student agrees issues 1, 2, 4, 5 and 7 might be confusing because of the references to the 2021-2022 school year and because the time periods in the issue headings are not necessarily consistent with the allegations beneath the headings. Student asks for leave to amend as an alternative to dismissal, but Student did not file a proposed amended complaint with his opposition.

OAH does not have jurisdiction over the claims alleged in Student's complaint which Student concedes were resolved by the Settlement Agreement. Except as otherwise specified below, Folsom Cordova Unified's motion to dismiss is granted as follows:

- Issue 1a, alleging a failure to conduct an adequate functional behavior assessment based on conduct or omissions during the period prior to and through June 30, 2022 is dismissed.
- Issue 1b, alleging a failure to provide a behavior intervention plan for the 2021-2022 school year based on conduct or omissions during the period prior to and through June 30, 2022 is dismissed.
- Issue 2, alleging a failure to offer sufficient services in the form of a one-to-one aide for the 2021-2022 school year, based on conduct or omissions during the period prior to and through June 30, 2022 is dismissed.
- Issue 4, alleging a failure to offer adequate goals for the 2021-2022 school year based on conduct or omissions during the period prior to and through June 30, 2022 is dismissed.

- Issue 5, alleging a failure to address regression Student suffered in the 2021-2022 school year based on conduct or omissions during the period prior to and through June 30, 2022 is dismissed.
- Issue 7, alleging a failure to offer placement with typically developing peers to the maximum extent possible for the 2021-2022 school year based on conduct or omissions during the period prior to and through June 30, 2022 is dismissed.

Notwithstanding the foregoing, this Order does not dismiss any claims made by Student arising out of the March 24, 2022 IEP, or the May 2022 IEP amendment. Because Folsom-Cordova Unified did not specifically move or argue that Student's claims arising out of March 24, 2022 IEP or any amendment were barred by the Settlement Agreement, this Order does not address or adjudicate those issues, all of which are specifically excluded from scope of the dismissal. Nor does this Order dismiss any issues based on conduct or omissions which occurred after June 30, 2022.

OAH interprets Folsom-Cordova Unified's motion to dismiss Student's proposed resolutions at page 42, line 25 through page 43, line 7 and page 45, line 14 through page 46, line 14 involving the 2019-2020, 2020-2021 and 2021-2022 school years and extended school years 2020 and 2021, as a motion to strike. A motion to dismiss is not an appropriate vehicle for challenging a proposed resolution. Here, Student concedes that the remedies at page 42, lines 14 through 22 and page 45, lines 4 through 26 should be amended to refer to only the 2022-2023 school year, however, Student does not cite to all of the same page and line references addressed by the motion. Because Student admits that the Settlement Agreement resolved Student's claims through June 30, 2022, the proposed resolutions seeking relief based on claims for that same time period are also barred. (Cf., California Code of Civil Procedure § 436 [A court may, upon

a timely motion, or at any time in its discretion, upon terms it deems proper strike out any irrelevant or improper matter inserted in any pleading or all or any part of any pleading not drawn in conformity with the law.].) Accordingly, Folsom-Cordova Unified's motion to strike is granted as follows:

- Student's proposed resolutions at page 42, line 25 through page 43, line 7 and page 45, line 14 through page 46, line 14 to the extent they are based on claims which have been dismissed, are stricken.

The motion to strike is otherwise denied for the same reasons given regarding the motion to dismiss. Student's request for leave to amend is denied without prejudice.

IT IS SO ORDERED.

Laurie Gorsline

Laurie Gorsline
Administrative Law Judge
Office of Administrative Hearings