

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAMBRIAN SCHOOL DISTRICT.

OAH Case No. 2014090680

ORDER DENYING MOTION TO
DISMISS WITHOUT PREJUDICE AND
BIFURCATING ISSUES

On September 17, 2013, Parents on behalf of Student filed a Request for Due Process and Mediation (complaint) with the Office of Administrative Hearings, naming Cambrian School District as the respondent. On September 29, 2014, Cambrian filed a Motion to Dismiss Student's complaint, alleging that the claims were barred by an August 12, 2013 Settlement Agreement between Cambrian and Student. Student filed an opposition to Cambrian's motion on October 1, 2014.

STATEMENT OF FACTS¹

Student is currently a fifth grader at the Esther B. Clark School, a certified nonpublic school. Student has had attachment issues and learning problems since his adoption at the age of five and a half.

The parties reached a settlement of a dispute involving Student's education program on August 13, 2013. The agreement went into effect at the beginning of school year 2013-2014 and also covered school year 2014-2015 and extended school year 2015. Cambrian was obligated to reimburse Student the sum of \$22, 000.00 per school year for out-of-pocket costs incurred by Student resulting from his unilateral placement. Student would bear any costs which were incurred beyond the amounts paid by Cambrian. The agreement was to "act as a release of education and related unforeseen or unknown claims." (Settlement Agreement, p.2.) Thus, Student released all education claims from the beginning of school year 2013-2014 through the end of the 2015 extended school year.

Section 3 included this provision:

¹ The facts are based upon those alleged in the complaint, the motion to dismiss, and the opposition to the motion.

(d) The above waivers would not apply in the event of an unforeseen, significant change in Student's circumstances resulting in a dramatic change in Student's educational needs, for example, if Student were to sustain a traumatic brain injury (TBI).

Following the execution of the Settlement Agreement, Student enrolled in the Athena Academy, a nonpublic school specializing in educating dyslexic students. Student then enrolled in the St. Timothy's School after his parents felt he had not made educational progress. Because Student was not receiving benefit at St. Timothy's, both academically and behaviorally, Student enrolled in the Esther B. Clark School.

Student's parents had him assessed by Dr. Ela Bernou, a neuropsychologist. Dr. Bernou diagnosed Student with neurodevelopmental disorders associated with prenatal alcohol exposure (extremely likely), posttraumatic stress disorder with dissociative symptoms, attention deficit-hyperactivity combined presentation and severe, and autism disorder. Previously, Student had been diagnosed with reactive attachment disorder, posttraumatic stress disorder, specific learning disability (dyslexia), anxiety, and sensory processing disorder.

On July 31, 2014, Student forwarded Dr. Bernou's assessment to Cambrian and requested an Individualized Education Program team meeting. Citing the Settlement Agreement, Cambrian refused.

ISSUES ALLEGED IN THE COMPLAINT

Student's complaint raises two related issues. The first issue is that Cambrian failed to provide Student a free appropriate public education from the day it knew his circumstances changed, resulting in a dramatic change to his needs. Here, Student alleges that Cambrian is in violation of section 3(d) of the Settlement Agreement. The second issue is that Cambrian failed to provide Student a FAPE for school year 2014-2015 due to its failure to hold an IEP due to Cambrian's alleged violation of section 3(d).

APPLICABLE LAW

Under the IDEA, eligible children with disabilities are entitled to a FAPE, which means special education and related services that are available to the child at no charge to the parent or guardian, meet State educational standards, and conform to the child's IEP. (See 20 U.S.C. §§ 1400(d), 1401(3), 1401(9), 1401(29), 1412(a); Ed. Code, §§ 56001, 56026, 56040.)

A special education settlement agreement is considered a contract. (See, e.g., *D.R. v. East Brunswick Board of Education* (3rd Cir. 1977) 109 F.3d 896, 898.) In California, contracts are interpreted based on principles set forth in the Civil Code. (Civ. Code § 1635.)

These statutory principles require a contract to be “interpreted...to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.” (Civ. Code, § 1636.) If the language is clear and explicit, the language governs the interpretation of the contract. (Civ. Code, § 1638.) When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible. (Civ. Code, § 1639.)

The philosophy of the IDEA is that individuals are required to “utilize the elaborate administrative scheme established by the IDEA before resorting to the courts to challenge the actions of the local school authorities.” (*School Board of Lee County, Florida v. M.M. ex rel M.M.* (11th Cir. 2009) 348 Fed.Appx. 504, 511, citing *N.B. v. Alachua County Sch. Bd.* (11th Cir. 1996) 84 F.3d 1376, 1378.) A parent’s claim that a school board breached provisions of a settlement agreement reached in connection with an IDEA due process proceeding, is primarily a challenge relating to the provision of a FAPE, and, as such, must first be addressed administratively. (*Ibid.*)

Similarly, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. March 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the Court held that OAH has jurisdiction to adjudicate claims alleging a denial of a FAPE resulting from a failure to comply with the terms of a mediated settlement agreement. However, a “mere breach” of a settlement agreement, without a claim alleging a denial of a FAPE, should be addressed by the compliance complaint procedures of the California Department of Education.

Here, Student’s claim that Cambrian’s alleged failure to comply with a provision of the October 28, 2008 settlement agreement is a challenge relating to a provision of a FAPE. Specifically, Student has alleged that Cambrian’s failure to conduct an IEP team meeting because of an unforeseen and significant change in circumstances pursuant to the terms of the Settlement Agreement resulted in educational harm to Student. While OAH lacks jurisdiction to enforce settlement agreements, Student’s issue is properly within the jurisdiction of OAH, as it has been raised for the purpose of addressing an alleged denial of a FAPE, and not for the purpose of enforcing the Settlement Agreement.

Cambrian contends that Student’s claims are barred by section 3(d) of the Settlement Agreement. However, Student’s complaint alleges facts that raise an issue of fact—whether the assessment of Dr. Bernou comprises an unforeseen and significant change in circumstances. Therefore, there exists an issue of fact for the hearing officer to decide and is not one that is properly decided in a motion to dismiss. Cambrian may raise the issue of the bar of the Settlement Agreement as an affirmative defense at hearing. Pursuant to the authority discussed above, OAH has jurisdiction to entertain Student’s complaint. Thus, Cambrian’s motion to dismiss is denied without prejudice.

BIFURCATION

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at trial.

Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

Generally, OAH will bifurcate a hearing where the resolution of a threshold question will determine whether the remainder of a hearing will be necessary. For example, OAH will bifurcate the issue of whether a student is or was a resident of a school district named as a respondent in a complaint to determine if the district was appropriately named as a party. OAH has also bifurcated specific legal issues such as the statute of limitations because a determination of that issue may reduce or eliminate issues and determine whether the remainder of the hearing will be necessary. Bifurcation limiting parties or issues furthers judicial economy by dismissing a named respondent from a complaint, or by finding that no complaint exists against a respondent due to the student's lack of residency, or that the issue is barred by the statute of limitations.

Here, this matter contains the issue of the applicability of section 3(d) of the Settlement Agreement as to the responsibilities of Cambrian. In the event that there is a finding adverse to Cambrian, the second issue is what remedies should be awarded. Thus, the threshold issue is whether or not an unforeseen and significant change has occurred resulting in a dramatic change in Student's educational needs.

Pursuant to the ALJ's motion, this matter is bifurcated and the issue of whether or not Cambrian violated section 3(d) of the Settlement Agreement of August 13, 2013 by its refusal to hold an IEP meeting shall be heard on the scheduled hearing date.

ORDER

1. Cambrian's motion to dismiss is denied without prejudice.
2. Upon motion of the ALJ, the matter shall be bifurcated and the issue of whether Cambrian violated section 3(d) of the Settlement Agreement of August 13, 2013, by its refusal to hold an IEP meeting shall be heard on the scheduled hearing date. All other remaining issues shall be heard at a later date.

IT IS SO ORDERED.

DATE: October 3, 2014

/s/
ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings