

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

COMPTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021061041

ORDER DENYING MOTION TO DISMISS BASED UPON
SETTLEMENT AGREEMENT

SEPTEMBER 23, 2021

On June 30, 2021, Student filed a due process hearing request, called complaint, with the Office of Administrative Hearings, referred to as OAH, naming Compton Unified School District. On September 8, 2021, Compton filed a motion to partially dismiss Student's complaint. On September 10, 2021, Student filed opposition to Compton's motion.

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.)

This limited jurisdiction does not include claims alleging a school district’s failure to comply with a settlement agreement. (*Id.* at p. 1030.) In the *Wyner* case, the parties reached a settlement agreement in which the district agreed to provide certain services during the course of a due process hearing. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student filed another due process hearing alleging the district did not comply with the settlement agreement in the first case. A hearing officer determined that the issues alleging the failure to comply with the settlement agreement in the first case were beyond its jurisdiction. This ruling was upheld on appeal. The decision in *Wyner* held that “the proper avenue to enforce Special Education Hearing Office 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 Special Education Hearing Office order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

More recently, in *Pedraza v. Alameda Unified School Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603), the District Court held that OAH has jurisdiction to adjudicate claims that allege a student was denied a free appropriate public education as a result of the violation of a mediated settlement agreement. However, a breach of a mediated settlement agreement should be addressed by the California Department of Education’s compliance complaint procedure.

DISCUSSION

Student raised numerous issues in the complaint; however, Compton requests only that Student's issue 1 subsections (a), (b), (c), and (d), and issue 2 subsection (a) be dismissed. The relevant issues are as follows:

1. Did Compton fail to offer Student a free appropriate public education, called a FAPE, for the 2019-2020 school year by failing to:
 - a) conduct and present an independent educational evaluation of Student in the area of occupational therapy within a reasonable time as agreed upon in the settlement agreement executed on May 22, 2019;
 - b) modify the offer of a FAPE within 30 days of the execution of the agreement by increasing language and speech services to two hours per week as agreed upon in the settlement agreement executed on May 22, 2019;
 - c) conduct an individualized education program, called IEP, meeting within 30 days of execution of the settlement agreement as agreed upon in the settlement agreement executed on May 22, 2019; and
 - d) implement the compensatory speech and language hours as agreed upon in the settlement agreement executed on May 22, 2019?
2. Did Compton fail to offer Student a FAPE for the 2020–2021 school year by:
 - a) failing to implement the compensatory speech and language hours as agreed upon in the settlement agreement executed on May 22, 2019?

Compton asserts that these issues must be dismissed because OAH does not have jurisdiction over settlement breaches even if Student attempts to frame them as FAPE violations because these matters fall within the purview of the courts or the California Department of Education. Further, the settlement agreement specifically waived Student's right to refile claims that were settled under the settlement agreement,

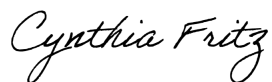
and the settlement agreement specifically removed OAH as having enforceability powers over the agreement.

Student contends that the issues arose after the date of the execution of the settlement agreement which resulted in a denial of FAPE. And the settlement agreement waiver language must not contradict federal policy's intention of encouraging settlement agreements.

Generally, OAH does not have jurisdiction to enforce or interpret settlement agreements or OAH decisions. Student's complaint, however, does not seek enforcement or interpretation of a previous settlement agreement. Instead, Student contends that Compton denied him a FAPE for failing to conduct an occupational therapy independent educational evaluation in a timely matter, hold an IEP meeting, modify the IEP to increase speech and language services, and implement speech and language services. Further, Student's issues applicable to this motion do not attempt to relitigate issues arising before the May 22, 2019 executed settlement agreement, rather, the issues emerged afterward.

Accordingly, the motion is denied. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Cynthia Fritz". The script is cursive and fluid, with the first name "Cynthia" written in a larger, more prominent hand than the last name "Fritz".

Cynthia Fritz

Administrative Law Judge

Office of Administrative Hearings