

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT, AND CONTRA COSTA
COUNTY OFFICE OF EDUCATION.
OAH CASE NUMBER 2021080223

ORDER DENYING MOTION TO DISMISS

SEPTEMBER 21, 2021

Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Pleasanton Unified School District and Contra Costa County Office of Education on August 9, 2021. The Request for Due Process is referred to as a Complaint. The Office of Administrative Hearings is referred to as OAH. Pleasanton filed a Motion to Dismiss specific issues in the complaint on September 14, 2021. On September 17, 2021, Student filed an opposition.

Pleasanton seeks an order dismissing Issues A(1), A(2), B(1) and B(2) of the Complaint. The four issues allege that "Respondents" failed to "provide" Student a "1:1 aide" for the 2020-2021 and 2021-2022 school years.

Pleasanton asserts that the four issues go beyond the scope of a 20-page March 21, 2021 settlement agreement between Parent, Contra Costa County and Pleasanton. The settlement agreement, called Agreement, acknowledges that Student's operative IEP is the August 27, 2019 IEP, and the placement provided in that IEP shall be stay put through 2023 extended school year. The IEP provides for a one-to-one licensed vocational nurse. It does not provide for a one-to-one educational aide/paraprofessional. Additionally, nothing in the Agreement refers to an obligation by Pleasanton or Contra Costa to provide Student with a one-to-one educational aide.

Parents reserved the right in the Agreement to make claims related to the implementation, enforcement or denials of a free appropriate public education, called FAPE, under the IEP. (Agreement, Par. 2, pages 3-4). The Agreement includes a General Release and Discharge of claims through the effective date of the Agreement. The Prospective General Release excepts proceedings to enforce the Agreement and claims for denial of FAPE related to the Agreement. (Agreement, Page 15).

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.

Pleasanton asserts that Student was never entitled to a “one-to-one aide”, in the stay put IEP or through the Agreement. Pleasanton asserts that OAH recently denied Student stay put, in this case, based on a finding that the IEP and Agreement did not specifically provide Student with a one-to-one aide. Pleasanton also refers to an OAH Decision in Case No. 2019100433, between the same parties, which found that the August 27, 2019 IEP offered Student 1725 minutes weekly of one-to-one “specialized health care services by a vocational nurse.” Nothing in the Settlement Agreement or the prior OAH decision specifically determined that the Respondents in this case were obligated to offer and provide Student a one-to-one educational aide/paraprofessional, in addition to the one-to-one health care aide.

The factual findings by OAH in a Stay Put motion are not a final adjudication of disputed facts, and therefore the issue must be resolved at hearing. Pleasanton's argument that the 2019 OAH Decision estopped Student from raising the claim that Pleasanton denied FAPE by failing to "provide" a one-to-one aide was not persuasive because that was not an issue before the ALJ in the 2019 OAH Decision.

Based on the way Issues A(1) and (2), and B(1) and (2) are framed, one can interpret them to mean that Student contends the Respondents denied a FAPE by failing to implement the August 2019 IEP by not providing Student with a one-to-one health aide, or by failing to offer Student with an educational one-to-one aide, leaving open for determination by the hearing officer at the prehearing conference and due process hearing whether the claim is based on an educational aide or a health care aide.

The denial of FAPE claim is not barred by the Settlement Agreement. The resolution of the issues is a matter within OAH jurisdiction, and one for the hearing officer to decide after making findings of fact based upon the evidence presented, and after reviewing and interpreting the relevant documents based upon the facts presented at hearing.

Accordingly, Pleasanton's motion to dismiss is denied without prejudice, deferring to the hearing judge to make that determination after the parties present their evidence during the due process hearing.

IT IS SO ORDERED.

Adrienne L. Krikorian

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Administrative Law Judge

Office of Administrative Hearings