

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS OF:
PARENT ON BEHALF OF STUDENT,

and

MT. DIABLO UNIFIED SCHOOL DISTRICT,
OAH CASE NUMBER 2021090436
OAH CASE NUMBER 2021080274
OAH CASE NUMBER 2021080654

ORDER GRANTING MOTION TO DISMISS ISSUE BASED
UPON SETTLEMENT AGREEMENT

SEPTEMBER 21, 2021

On August 6, 2021, Parent on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings in case number 2021080274, naming Mt. Diablo Unified School District. The Request for Due Process is referred to as a Complaint. The Office of Administrative Hearings is referred to as OAH.

On August 23, 2021, Mr. Diablo filed a complaint with OAH in case number 2021080654, naming Student. On September 16, 2021, Student filed a second

complaint with OAH in case number 2021090436, naming Mt. Diablo Unified School District. On September 21, 2021, OAH consolidated OAH case numbers 2021080274, 2021080654, and 2021090436.

On September 15, 2021, Mt. Diablo filed a motion to dismiss issue in Student's complaint for OAH case number 2021080274. Mt. Diablo requests to dismiss claims that predate the 2020-2021 school year, based upon settlement agreements dated September 6, 2018 and June 10, 2020. Mt. Diablo attached the settlement agreements and a declaration in support of its motion.

On September 20, 2021, Student filed a response, wherein Student withdrew issues related to the September 6, 2018 settlement agreement. During a prehearing conference held on September 20, 2021, the parties orally argued in support of their pleadings.

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 raises two primary issues, and related sub-issues, against Mt. Diablo in his complaint for OAH case number 2021080274. Issue one alleges that Mr. Diablo denied Student a free appropriate public education, called FAPE, during the 2019-2020 school year and extended school year, based upon various grounds. Issue two alleges various claims related to the 2020-2021 school year. Mr. Diablo requests to dismiss issue one, and related sub-issues.

The parties voluntarily entered a settlement agreement on June 10, 2020, which resulted in the dismissal of OAH case numbers 2019110034 and 2020020008. The

settlement agreement resolved all claims against Mt. Diablo, through August 1, 2020. The settlement agreement provided Student \$49,998 for reimbursement for educational expense incurred through August 1, 2020, and attorney fees. In addition, the settlement agreement offered Student placement and services pursuant to a February 26, 2020 individualized education program, called IEP, as amended on June 8, 2020, within 30 days of Student's physical return to a Mt. Diablo school.

Student acknowledges the settlement agreement was fully executed on June 10, 2020, and resolved all claims against Mt. Diablo through August 1, 2020, the end of the 2019-2020 extended school year. Yet, Student seeks to litigate almost identical claims to those waived by the settlement agreement based upon the contention that Mt. Diablo did not implement the February 26, 2020 IEP, as amended, thereby denying Student a FAPE. Mt. Diablo asserts it complied with the agreement but was unable to implement the IEP because Student did not physically return to a Mt. Diablo school, as required by the settlement agreement. Moreover, Mt. Diablo correctly argues that any failure to implement the IEP was waived by the settlement agreement as to the 2019-2020 school year and extended school year. Therefore, Student's allegation that he was denied a FAPE, based upon Mt. Diablo's failure to implement the February 2020 IEP, or June 2020 settlement agreement, are barred as to the 2019-2020 school year and extended school year.

Based upon the foregoing, OAH does not have jurisdiction over Student's issue one, and related sub-issues, because they are barred by the June 10, 2020 settlement agreement. Should Student believe that Mt. Diablo breached the settlement agreement, Student may file a compliance complaint with the California Department of Education.

ORDER

1. Mt. Diablo's Motion to Dismiss Issue is Granted. Student's issue one, and related sub-issues, for OAH Case Number 2021080274 is dismissed.
2. The consolidated matter shall proceed as to the remaining issues.

IT IS SO ORDERED.


Paul H. Kamoroff (Sep 22, 2021 13:41 PDT)

Paul H Kamoroff
Administrative Law Judge
Office of Administrative Hearings