

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

FREMONT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2021090540

ORDER GRANTING MOTION TO DISMISS ALL ISSUES
FOR LACK OF JURISDICTION

OCTOBER 6, 2021

On September 17, 2021, Student filed a Request for Due Process Hearing, referred to as a complaint, with the Office of Administrative Hearings, naming Fremont Union High School District. The Office of Administrative Hearings is referred to as OAH.

On September 29, 2021, Fremont filed a Motion to Dismiss alleging OAH lacks jurisdiction to adjudicate all three issues alleged in the complaint. On October 1, 2021, Student filed an opposition. On October 5, 2021, Fremont filed a reply. On October 5, 2021, Student filed a sur-reply and an amended sur-reply.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education,” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a free appropriate public education to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified School. 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 *Wyner*, 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.

OAH does not have jurisdiction to decide claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), Section 1983 of Title 42 United States Code, the Americans with Disability Act (42 U.S.C. §§ 1201, et seq.), or the Unruh Civil Rights Act (Civ. Code, § 51). Further, OAH does not have jurisdiction to entertain claims regarding failure to comply with guidelines or orders issued by the California Department of Public Health, or any federal public health guidelines or orders.

DISCUSSION

Student alleges three issues. First, Student contends Fremont denied Student a free appropriate public education, called a FAPE, “by failing to implement the required transportation service complying California State mandated vaccines or regular COVID-19 tests from September 07, 2021 through the date of the hearing.”

Fremont asserts OAH lacks jurisdiction over Student’s first issue because OAH does not have jurisdiction to resolve a dispute regarding a third-party contractor’s

alleged non-compliance with or exemption from compliance with guidelines or orders of the California Department of Public Health.

As written, Student's first issue is not about the identification, evaluation, or educational placement of Student, or the provision of a free appropriate public education to Student, and therefore is not under the auspices of the IDEA. Although Student asserts he is being denied a FAPE, he contends the manner in which he is being denied a FAPE is because Fremont is "failing to implement the required transportation service complying California State mandated vaccines or regular COVID-19 tests." Other information in the complaint alleges Fremont has made transportation to Student's non-public school placement available through a private, contracted provider, and that the contracted transportation provider is not complying with an August 21, 2021 order by the California Governor regarding vaccination against COVID-19 or frequent tests for COVID-19. Parent does not want to access the transportation Fremont has made available to Student because Parent fears for Student's health in a vehicle with a person who is not vaccinated against COVID-19 or regularly tested for COVID-19. OAH does not have jurisdiction to enforce compliance with health guidelines or orders, or to control the means by which a school district provides related services. Accordingly, Student's first issue is dismissed for lack of jurisdiction.

Second, Student seeks a determination that Student and Fremont entered "into an enforceable settlement agreement pursuant to District's offer to settle dated January 13, 2020, pertaining to OAH Case No. 2019110958." This issue does not contend Fremont denied Student FAPE, but only requests that OAH conclude the parties reached an "enforceable settlement agreement" regarding a prior dispute. Third, Student alleges Fremont "fail[ed] to perform the settlement agreement beyond its expiry date due to COVID-19 pandemic, such that Student is entitled to its implementation."

Student alleges that while the settlement agreement made available to Student reimbursement for related services Parent would purchase for Student between the date of the agreement and June 30, 2020, Student was unable to procure services before that date due to "hardship" and "lockdowns" related to the COVID-19 pandemic and Parent's and Student's unfamiliarity with receiving related services through online delivery of therapies. Student alleges Parent asked Fremont to extend the date by which related services needed to be accessed, and Fremont denied the request. Student requests OAH order Fremont to "perform the settlement agreement."

Fremont asserts OAH lacks jurisdiction over Student's second and third issues because OAH's jurisdiction over claims involving breach of a settlement agreement only extends to claims that breach of a settlement agreement denied the Student a FAPE. The January 13, 2020 settlement agreement expressly states that "the reimbursements that the District agrees to provide herein do not constitute, and shall not be construed as, an admission of what constitutes a FAPE for Student." Fremont contends Student's complaint does not allege a breach of the settlement agreement but rather complains of Fremont's adherence to the agreement by refusing to reimburse Parent for any therapies procured after June 30, 2020, and further, even if Student's complaint did concern a breach of the settlement agreement, the complaint does not and cannot allege any purported breach denied Student a FAPE. Fremont contends OAH therefore does not, under *Wyner* and *Pedraza*, have jurisdiction over Student's claims. However, Parent may file a compliance complaint with the California Department of Education if Parent believes that Fremont is not complying with the settlement agreement. (<https://www.cde.ca.gov/sp/se/qa/cmpltproc.asp>)

In opposition to Fremont's Motion to Dismiss, Student asserts a party may dismiss claims with or without prejudice, and if without prejudice may refile claims at a

later date. Student's reason for reliance on this principle is unclear, but it is noteworthy that the January 13, 2020 settlement agreement resolved all claims Student had or could have raised in his prior complaint and under Paragraph II.B.6, required Student to withdraw his complaint with prejudice, precluding Student from, in the future, re-asserting the same claims for the same time period.

Student's second and third issues do not describe how Fremont's refusal to extend the contractual period of the January 13, 2020 settlement agreement denied Student a FAPE or otherwise violates the IDEA. Student's second and third issues do not identify facts that would define the claims as arising under the IDEA. Therefore, Student's second and third issues are dismissed because OAH does not have jurisdiction to hear claims related to impossibility or frustration of purpose of a settlement agreement, or to extend the parties' contractual agreement to a deadline based on external, changed circumstances.

ORDER

Fremont Union High School District's Motion to Dismiss all three of Student's issues is granted.

IT IS SO ORDERED.

Kara Hatfield

Kara Hatfield

Administrative Law Judge

Office of Administrative Hearings