

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

PLEASANTON UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2021110690

ORDER GRANTING MOTION TO DISMISS BASED UPON
SETTLEMENT AGREEMENT

FEBRUARY 22, 2022

On November 23, 2021, Student filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, called OAH, naming Pleasanton Unified School District, called Pleasanton, and Contra Costa County Office of Education. On January 3, 2022, OAH granted Student's motion to amend the complaint. On February 18, 2022, OAH dismissed Contra Costa County Office of Education as a party.

On February 10, 2022, Pleasanton filed a prehearing conference statement, and requested an initial legal argument before taking any evidence in this matter regarding the effect of the parties' March 2021 "Global Settlement and Release of All Claims",

called Agreement, including its past and prospective waivers, on Student's issues in this matter. The parties were given the opportunity to argue this matter at the prehearing conference. The undersigned took the matter under submission.

On February 15, 2022, the undersigned requested additional briefing by all parties regarding preliminary jurisdictional issues. On February 17, 2022, the undersigned denied Pleasanton's motion for initial legal argument before taking any evidence in this matter. The undersigned deemed Pleasanton's request for initial legal argument as a motion to dismiss the complaint for lack of OAH jurisdiction based upon the Agreement. (See February 17, 2022 Order Following Prehearing Conference.) The undersigned ordered Student to file opposition to Pleasanton's motion to dismiss the complaint by February 22, 2022, at 10:00 AM, which was timely filed.

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 school 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, called FAPE, as a result of the violation of a mediated settlement agreement where the parties acknowledged in the agreement that the services the school district agreed to constitute a FAPE. However, according to the Court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education’s compliance. Thus, OAH has the authority to interpret a settlement agreement to determine if the parties to the settlement agreement explicitly agreed that its terms constitute FAPE. And if the parties did explicitly state that in the agreement, OAH would have jurisdiction to hear claims related to a failure to implement a settlement agreement as to the settlement terms that were designated as FAPE only. OAH would lack jurisdiction as to all other claims.

When a party files a due process hearing request based on claims that were waived as part of a settlement agreement or outside OAH's jurisdiction, OAH will dismiss the case. (See e.g., Order Granting Motion to Dismiss Based Upon Settlement

Agreement (2020), *Parent on behalf of Student v. San Diego Unified School District*, OAH case number 2019120426; Order Granting Motion to Dismiss (2018) *Parent on behalf of Student v. East Side Union High School District and Santa Clara Office of Education*, OAH Case 2018110789; Order Granting Motion to Dismiss Issues One and Two of Student's Complaint (2018) *Parent on behalf of Student v. Carlsbad Unified School District*, OAH case number 2018060509. Thus, OAH also has the authority to interpret a settlement agreement to determine preliminary jurisdictional issues and to enable it to dismiss issues, the complaint, or parties, if it lacks jurisdiction.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be "reasonably susceptible" to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

DISCUSSION

Student raises numerous claims against Pleasanton as set forth in the February 17, 2022 Order Following Prehearing Conference as follows:

1. Did Pleasanton and CCCOE deny Student a free appropriate public education, called FAPE, from March 2021 through the end of the 2020-2021 school year by failing to:
 - a. implement the August 2019 individualized education program, called IEP, by failing to give Student a one-to-one academic aide for educational needs,
 - b. implement the August 2019 IEP by failing to give Student an academic aide with time for familiarization before the start of extended school year;
 - c. implement the August 2019 IEP by failing to give Student the appropriate equipment and devices;
 - d. implement the August 2019 IEP by failing to give Student a back-up one-to-one nurse;
 - e. implement the August 2019 IEP by failing to give Student a one-to-one nurse within 30 days of the departure of Student's one-to-one nurse in March 2021;
 - f. timely complete Student's vision and physical therapy assessments by the April 29, 2021 IEP team meeting;
 - g. failing to give data to Parent regarding Student's vision and physical therapy educational needs to enable Parent to monitor Student's progress in these areas of need.
2. Did Pleasanton and CCCOE deny Student a FAPE, during the 2021-2022 school year by through January 3, 2022, by failing to:
 - a. implement the August 2019 IEP, by failing to give Student a one-to-one academic aide and an limiting the one-to-one academic aide support,

- b. implement the August 2019 IEP by failing to give Student an academic aide with time for familiarization before the start of academic school year;
- c. implement the August 2019 IEP by failing to give Student the appropriate equipment and devices;
- d. implement the August 2019 IEP by failing to give Student a back-up vocational licensed nurse;
- e. implement the August 2019 IEP by failing to give Student a one-to-one nurse within 30 days of the departure of Student's on-to-one nurse in March 2021;
- f. implement the August 2019 IEP by not giving the appropriate amount of nurse aide services and supports;
- g. implement the August 2019 IEP by failing to give Student any educational services while Student remained at home;
- h. give appropriate and timely prior written notice regarding limiting the one-to-one licensed vocation nurse aide services and support;
- i. failing to offer an appropriate placement to Student when it offered home hospital instead of an appropriate home-based program;
- j. failing to offer appropriate in-person services for physical therapy, occupational therapy, vision therapy, and speech therapy;
- k. failing to offer appropriate one-to-one educational aide services and support;
- l. failing to offer appropriate one-to-one licensed vocation nurse aide services and support;
- m. failing to offer appropriate specialized academic instruction;

- n. failing to implement the October 2021 IEPs and March 2021 Settlement Agreement by failing to give Student appropriate one-to-one licensed vocation nurse aide, a back-up nurse, appropriate educational one-to-one aide support, timely one-to one aide support for the familiarization process, equipment in a timely manner, physical therapy, occupational therapy, and speech therapy
- o. failing to include Student's one-to-one licensed vocational nurse and one-to- aide for educational needs in the monthly meetings with Parents;
- p. failing to give prior written notice with parental safeguards in response to Parent's notice of unilateral placement of licensed vocational nurse and paraprofessional services; and
- q. failing to give prior written notice of parental safeguards in response to Parent's unilateral placement of physical therapy, occupational therapy, and speech therapy services.

OAH does not have jurisdiction to entertain this matter because: (1) the parties' Agreement unambiguously waived all claims through 2023 extended school year with some exceptions; (2) the exceptions to parties' prospective waiver in the Agreement fall outside of the *Pedraza exception* because the parties did not explicitly state that the terms of the Agreement constitute FAPE; and (3) any disputes related to Agreement modifications or other Individual with Disabilities Education Act claims are outside the exceptions of the parties' prospective waiver in the Agreement and the *Pedraza* exception. Student is not left without venues to adjudicate the claims raised. OAH, however, is not the proper venue to adjudicate this current dispute as it lacks jurisdiction.

THE PARTIES' AGREEMENT

The parties entered into and executed the Agreement in March 2021, settling claims related to both a pending OAH due process hearing and claims before the Federal District Court. It settled claims for specified amount of money and agreed on Student's prospective special education and services through the 2023 extended school year, in exchange for waivers and dismissal of the OAH and Federal Court complaints. A copy of the Agreement is attached to Student's First Amended Complaint, Pleasanton's Response to Order for Briefing, Contra Costa County Office of Education's Motion to Dismiss, and Student's Opposition.

The parties agreed to "...globally resolve all issues and claims through the Agreement. This Agreement constitutes a full and final resolution of all disputes, claims and issues through and including the Effective Date of the Agreement and continuing through the last day of the 2023 ESY for special education claims." (Agreement, at p. 2.) Thus, the Agreement was a mutual compromise and contained no admissions of liability.

THE PARTIES' AGREEMENT WAIVED CLAIMS THROUGH EXTENDED SCHOOL YEAR 2023 EXCEPT FOR CLAIMS BROUGHT IN A COURT OF COMPETENT JURISDICTION RELATED TO THE IMPLEMENTATION, ENFORCEMENT OR ANY DENIALS OF FAPE RELATED TO THE AGREEMENT.

As described in the Agreement, "Dispute" under the terms of the Agreement encompasses any and all claims, known and unknown through the last day of the 2023 extended school year, except for claims brought in a court of competent jurisdiction related to the implementation, enforcement or any denials of FAPE related to the Agreement. (Agreement, at p. 2.) Thus, the Agreement intended to resolve all known and unknown claims between the parties.

In exchange for the promises made in the Agreement, Parent provided an explicit, clear, and unambiguous waivers of claims that included a general release and discharge and a prospective general release.

The prospective general release states that, "This release and discharge also precludes Parent and/or Student and anyone acting on behalf of Parent and/or Student from hereafter initiating or maintaining any actions or proceeding against CCCOE and/or PUSD, other than proceedings to enforce this Agreement pursuant to the Enforcement and Breach provisions below and for denials of FAPE related to this Agreement, and including but not limited to actions OAH, the California Department of Education ("COE") CCCOE and/or PUSD through its respective uniform complaint procedures, and/or in state or federal court related to any and all claims, however framed, known and unknown, asserted and unasserted from the date of full execution of this Agreement and continuing through the last day of the 2023 ESY, except for claims brought in a court of competent jurisdiction related to the implementation, enforcement or any denials of FAPE related to this Agreement." (Agreement, at p. 15.)

Based upon the plain language of the Agreement, it is a full resolution of claims and covers all potential issues through the end of the 2023 extended school year with some exceptions. Accordingly, under the Agreement, Student can only challenge claims of implementation, enforcement, or any denials of FAPE related to the Agreement, through 2023 extended school year.

THE EXCEPTIONS TO THE PARTIES' WAIVER DO NOT FALL UNDER THE PEDRAZA EXCEPTION BECAUSE THE PARTIES SPECIFY THAT THE TERMS OF THE SETTLEMENT AGREEMENT CONSTITUTE FAPE.

In the Agreement under the section entitled "Student's FAPE and Placement" the Agreement states that "The Parties agree that Student's August 27, 2019 IEP, including all document attached and the Position Guide (Attachment A) constitutes Student's operative IEP ("operative IEP") with placement at Mauzy School in CCCOE." (Agreement at p. 3.)

The Agreement further states that "The Parties agree Mauzy School and operative IEP will be Student's stay put placement through the 2022-2023 school year, including the 2023 ESY." (Agreement, at p. 4.)

However, the Agreement is silent as to whether or not the parties agree that the Agreement terms constitute an offer of FAPE. Nowhere in the parties 20-page Agreement does it state that any term in the Agreement constitutes FAPE. The Agreement also does not specify that the August 27, 2019 IEP, which the Agreement designates as the operative IEP, provides FAPE. That would be a necessary component to trigger the *Pedraza* exception.

Student argues that the Agreement designates the August 27, 2019 IEP as the operative IEP and stay put thus implying it is FAPE. Moreover, the discussion regarding the August 27, 2019 IEP as the operative IEP and stay put placement in the Agreement is under the title entitled "Student's FAPE and Placement" (Agreement, at p. 3), thus designating it as FAPE. Student also points to various areas in the Agreement that mention FAPE. Student, however, cannot point to any instance where the parties explicitly state that any term of the Agreement is FAPE.

Student further argues in the opposition that the Agreement's explicit carve-outs preserve Student's right to bring FAPE claims. Student is mistaken. The limited carve-outs in the Agreement allow Student to bring denial of FAPE claims related to the Agreement only, not as to all FAPE claims. As discussed, the Agreement fails to set forth any term in the Agreement as FAPE and thus, has no denial of FAPE claims related to the Agreement.

To invoke the *Pedraza* exception, the parties must clearly acknowledge that the terms of a settlement agreement explicitly constitute FAPE. The parties' Agreement fails to do this. Implication is not enough. Because the parties failed to provide a definite statement anywhere in the Agreement that any term constitutes FAPE, the parties' waiver exceptions fall outside of *Pedraza*. Moreover, as found in *Wyner*, OAH lacks jurisdiction to hear straight implementation or enforcement issues related to a settlement agreement.

Student further points to a December 22, 2021 OAH order, in OAH case number 2021080223, in support of the contention that the case must not be dismissed. OAH decisions, however, are not binding authority. (Cal. Code Regs., titl. 5 § 3085.) And Student did not cite an OAH decision but rather, an OAH order. The order involved a different case with the same parties and Agreement. The order noted that the Agreement allowed for enforcement of the denials of FAPE related to the Agreement. However, the order did not determine if the parties set forth terms in the Agreement as FAPE to distinguish *Pedraza* from *Wyner*. Here, the undersigned made this analysis and finds that the *Pedraza* exception does not apply. Thus, while the Agreement contemplates OAH hearing matters related to implementation and enforcement of the denials of FAPE in the Agreement, there cannot be any denials of FAPE in the Agreement, based on its plain language because none were explicitly specified in it.

Additionally, the parties agreed not to change Student's placement and services unless agreed to by Parent through the IEP process. "The Parties agree not to change Student's program, placement, familiarization or services at Mauzy or the operative IEP unless mutually agreed upon and consented to by Parent in the form of an IEP Amendment or Annual IEP." (Agreement, at p. 4.) "To the extent that there are changes by mutual agreement and Parents do not revoke consent to those changes, the operative and stay put IEPs shall be the August 27, 2019 IEP and attachments along with the mutually agreed upon changes." (Agreement, at p. 4.) Additionally, "Parent authorizes PUSD and CCCOE to implement the IEP and will not claim during the term of this Agreement that the August 27, 2019 IEP or any consented to IEP Amendments denies Student a free appropriate public education except for claims related to the implementation, enforcement or any denials of FAPE related to this Agreement." (Agreement, at p. 4.)

Thus, any modification made to the Agreement was neither incorporated into the Agreement, nor designated as FAPE. The clear terms of the Agreement waived all claims through 2023 extended school year except for implementation, enforcement, or any denials of FAPE related to the Agreement, through 2023 extended school year. Thus, any dispute over offers and implementation of IEPs, amendment IEPs, modifications to the Agreement, such as agreed upon changes of Student's program or services through the IEP process, are not a part of the Agreement, and therefore were waived through 2023 extended school year. (Agreement, at p. 15.) Further, if the Agreement can be construed as incorporating any of the parties' modifications into the Agreement, the Agreement also did not specify that any modifications were FAPE. Thus, any modifications would not meet the *Pedraza* exception and would also be outside of OAH's jurisdiction.

Accordingly, any issues related to the implementation, enforcement or any denials of FAPE related to *this* Agreement do not meet the *Pedraza* exception and OAH lacks jurisdiction to hear them. Further, any disputes related to issues outside of the Agreement, such as offers and implementation of IEPs and amendments unrelated to the Agreement were waived through the parties' prospective waiver. If any of the modifications could be construed as incorporated into the Agreement, they would also be outside of the *Pedraza* exception because they were not designated as FAPE. Thus, all issues in Student's first amended complaint are either outside of OAH's jurisdiction or were waived through the Agreement. (Agreement, at p. 15.)

Student argues that the Agreement allows for OAH to hear these types of claims. The parties do not have the authority to confer jurisdiction through a settlement agreement. Here, OAH is neither the California Department of Education, nor the competent court of jurisdiction or federal district court of the United States. Thus, OAH does not have jurisdiction to hear this matter in its entirety. Accordingly, Student's first amended complaint is dismissed.

ORDER

OAH Case Number 2021110690 is dismissed.


Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings