

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023120251

ORDER DENYING MOTION TO DISMISS, IN PART, BASED

UPON SETTLEMENT AGREEMENT

JANUARY 17, 2024

On December 7, 2023, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming San Francisco 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 January 8, 2024, San Francisco filed a Motion to Dismiss, in Part. On January 11, 2024, Student filed a response.

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, called FAPE, 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 alleged two issues in his complaint, 1a through 1h, and 2a through 2g, which raised nineteen claims against San Francisco. San Francisco moved to dismiss issue 1c which alleged a denial of FAPE from October 12, 2022, through the end of the 2022-2023 school year, including extended school year, by failing to timely fulfill terms of a settlement agreement.

San Francisco's Motion to Dismiss in Part requested issue 1c be dismissed because Student released all claims against the San Francisco through the date of Board Approval on October 11, 2022. The date of the fully executed settlement agreement was September 23, 2022. Additionally, San Francisco contended that OAH did not have jurisdiction to enforce the terms of a settlement agreement or adjudicate breach of contract/implementation matters as Student requested in issue 1c. A copy of the settlement agreement was attached to San Francisco's Motion to Dismiss, in Part.

Student acknowledged that the parties entered a final settlement agreement on September 23, 2022. Student contended the claim in the issue 1c was not a breach of the settlement agreement but a denial of FAPE, an issue within OAH's jurisdiction. Additionally, Student argued that the settlement agreement's waiver does not apply because issue 1c falls outside the settlement period which ended October 11, 2022, when the board approved it.

The September 23, 2022, settlement agreement intended to resolve all claims through the date of board approval, which the parties agree was October 11, 2022. In part H, the parties agreed that the settlement agreement was in lieu of San Francisco's

obligation to provide FAPE to Student during the settlement period, through the date of board approval.

Here, in issue 1c, Student alleged a denial of FAPE for failing to implement services and supports that the parties agreed to in the settlement agreement, from October 12, 2022, through the end of the 2022-2023 school year, including extended school year. The time period alleged in 1c arose after the settlement period. As a result, issue 1c is not barred based on Student's waiver of the provision of FAPE during the settlement period which ended October 11, 2022. Additionally, Student's claim in 1c does not fall outside of OAH's jurisdiction because he is not alleging a breach of contract. Rather Student alleged a denial of FAPE for failing to implement supports and services that the parties agreed would be added to Student's IEP. The alleged denial of FAPE is within OAH's jurisdiction. Student may allege a denial of FAPE beginning October 12, 2022, even if the failure to implement allegation includes supports and services that were listed in the settlement agreement. Accordingly, San Francisco's motion to dismiss, in part, is denied.

ORDER

San Francisco's Motion to Dismiss, in Part, is denied.

IT IS SO ORDERED.

Marlo Nisperos

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Administrative Law Judge

Office of Administrative Hearings