

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

IN THE MATTER OF:  
  
PARENTS ON BEHALF OF STUDENT,

v.

PACIFIC GROVE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2024080815

ORDER PARTIALLY GRANTING PACIFIC GROVE'S MOTION  
TO DISMISS BASED UPON SETTLEMENT AGREEMENT AND  
DENYING STUDENT'S REQUEST FOR SANCTIONS

SEPTEMBER 23, 2024

On August 21, 2024, Parents on behalf of Student filed a request for due process hearing, called a complaint, with the Office of Administrative Hearings, called OAH, naming Pacific Grove Unified School District, called Pacific Grove. On September 13, 2024, Pacific Grove filed a motion to dismiss Student's complaint contending OAH lacked jurisdiction to hear this matter. On September 19, 2024, Student filed an opposition to Pacific Grove's motion to dismiss and requested sanctions on the grounds that Pacific Grove's motion was frivolous. On September 19, 2024, Pacific Grove filed a reply to Student's opposition to motion to dismiss.

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,” called FAPE. (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.)

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 sometimes dismiss the case. OAH 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.

OAH's 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.)

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 FAPE because 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.

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, for example when it is 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.)

## JULY 24, 2023 SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

Pacific Grove argues OAH does not have jurisdiction to adjudicate the claims raised by Student in her complaint because they are barred by a July 24, 2023 written settlement agreement between the parties in an earlier filed case with OAH designated as case number 2023060766. Pacific Grove requests Student’s complaint be dismissed in its entirety.

Student acknowledges the parties entered a final settlement agreement on July 24, 2023, which was approved by Pacific Grove’s governing board on August 3, 2023. Student contends the future limited waiver agreed upon by the parties in the settlement agreement does not bar the issues raised in the complaint. Student included a copy of the July 24, 2023 settlement agreement with her opposition brief.

Pursuant to the terms of the settlement agreement, Student attended Chartwell School, a California certified non-public school, as a parentally placed private school student without entitlement to FAPE For the 2023-2024 regular and extended school year. The July 28, 2023 settlement agreement required Pacific Grove to hold an IEP team meeting within the last 60 days of the 2023-2024 school year to make a FAPE offer for the 2024-2025 school year. The July 28, 2023 settlement agreement states in relevant part:

- Paragraph One: “This Agreement consists of a compromise, release and settlement of any and all disputes, disagreements, demands, causes of action, and claims, Parents and Student have against [Pacific Grove],

whether known or unknown, arising from or related to Student's education, including but not limited to programs, placement, services, assessments, entitlement to compensatory education, reimbursement for costs incurred, and attorneys' fees and costs, if any, up to and through the Effective Date of this Agreement . . ."

- Paragraph 2: "The Term of the Agreement shall be from the Effective Date of this Agreement up to and through the last day of [Pacific Grove's] 2023-2024 school year, or through the period of stay-put, if any, pursuant to Paragraph 3.7 below."
- Paragraph 3.1: For the 2023-2024 regular school year, Parents shall enroll Student in Chartwell School, a nonpublic school, as a parentally placed private school student without entitlement to a FAPE.
- Paragraph 3.7: The parties agree that in the event Parents allege [Pacific Grove] did not make a FAPE offer in an IEP team meeting to be held in Spring 2024 for the 2024-2025 school year, the parties shall have the right to file for due process with OAH to receive an order determining whether the offer is FAPE and in such event Chartwell School would constitute Student's stay put placement.
- Paragraph 4: The parties agree that after the Effective Date of the Agreement, and within the last 60 days of Pacific Grove's 2023-2024 regular school year, the parties will convene an IEP team meeting to discuss Student's FAPE offer for the 2024-2025 school year.
- Paragraph 12: "[Parents] hereby fully release and discharge [Pacific Grove] from any and all disputes, causes of actions/ and/or claims, whether known or unknown, arising from or related to Student's education, including but not limited to programs, placement, services, assessments,

entitlement to compensatory education, reimbursement for costs incurred, and attorneys' fees and costs, if any, up to and through the Effective Date of this Agreement, and continuing on up to and through the Term of this Agreement, as defined herein . . ." The release expressly excepts any all releases and waivers related to: (1) all assessments, if any, Pacific Grove conducts during the term of the agreement, and (2) All violations associated with the IEP convened in spring 2024, "including but not limited to procedural violations and the offer of FAPE."

- Paragraph 30: "The Effective Date of this Agreement shall be the date this Agreement is signed by parties and thereafter approved by [Pacific Grove's] Governing Board. . . "

Student's complaint in this matter alleges five issues. Specifically, Student alleges Pacific Grove denied Student a FAPE, during the 2024-2025 school year by failing to:

1. timely offer Student a FAPE in spring 2024 for the 2024-2025 school year as required by the July 24, 2023 settlement agreement between the parties, approved by Pacific Grove's governing board on August 3, 2023;
2. assess Student prior to making its FAPE offer for the 2024-2025 school year;
3. offer Student a FAPE at IEP team meetings held on May 28, 2024 and May 31, 2024;
4. offer a placement reasonably calculated to allow Student to make meaningful progress at a July 31, 2024 IEP team meeting; and
5. make a clear written offer of FAPE at a July 31, 2024 IEP team meeting.

In interpreting a contract, the initial inquiry is whether the contract language is broad enough to cover the activity at issue. If it is not, then the contract does not apply and the analysis ends. Here, the express waiver in the July 28, 2023 settlement

agreement does not apply to Student's Issue 1 (failing to timely to offer Student a FAPE in spring 2024 for the 2024-2025 school year), Issue 3 (failing to offer Student a FAPE at IEP team meetings held on May 28, 2024, and May 31, 2024), Issue 4 (failing to offer a placement reasonably calculated to allow Student to make meaningful progress at a July 31, 2024 IEP team meeting, and Issue 5 (failing to make a clear written FAPE offer at a July 31, 2024 IEP team meeting). The settlement agreement explicitly contemplated and permitted the parties to challenge the procedural and substantive appropriateness of Pacific Grove's FAPE offer for the 2024-2024 school year and to file a due process hearing request with OAH.

Student's Issue 2 (failing to assess Student prior to making its FAPE offer for the 2024-2025 school year) is barred by the express terms of the settlement agreement. In Paragraph 1 of the settlement agreement, Student waived any and all claims arising from her education, including programs, placement, services and assessments up to and through the "Effective Date of the Agreement and continuing on up to and through the Term of this Agreement." Paragraph 12 excepted from the release of claims issues related to assessments conducted by Pacific Grove during the term of the agreement. Student's Issue 2 does not challenge the validity of any assessments conducted by Pacific Grove through the term of the agreement and therefore this exception does not apply. Instead, the complaint alleges Pacific Grove failed to assess Student prior to the spring 2024 IEP team meeting, which issue was released by the explicit terms of the waiver. Therefore, Issue 2 is dismissed.

Pacific Grove's argument that the waiver of claims extends through stay put is unpersuasive. Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code,

§ 56505, subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the last agreed-upon and implemented individualized educational program placement prior to the dispute arising. (*Thomas v. Cincinnati Board of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.) Student’s complaint does not allege Pacific Grove has attempted to change Student’s educational program during the pendency of the due process proceeding. Confusingly, Pacific Grove argues Student waived all claims against Pacific Grove during the pendency of the due process hearing. This contention is not supported by legal authority and conflicts with the unambiguous language in the June 24, 2023 settlement agreement permitting Student to challenge Pacific Grove’s FAPE offer for the 2024-2025 school year.

Pacific Grove’s arguments that Student cannot challenge the appropriateness of IEP team meetings held on May 28 and 31, 2024, because they were held during the 2023-2024 school year, that it had no obligation to offer a FAPE for the 2024-2025 school year because Student was parentally placed, and provided Parents a written FAPE offer also are unpersuasive. The settlement agreement expressly and unambiguously granted Student the right to challenge Pacific Grove’s FAPE offer for the 2024-2025 school year. Student’s Issues 1, 3, 4, and 5 relate to the FAPE offer for the 2024-2025 school year, are not barred by the parties’ waiver of claims, and are within OAH’s jurisdiction. Accordingly, Pacific Grove’s motion to dismiss Issues 1, 3, 4, and 5 is denied.

## STUDENT’S REQUEST FOR SANCTIONS

In certain circumstances, an administrative law judge, known as the ALJ, presiding over a special education proceeding is authorized to shift expenses from one party to another, or to OAH. (Gov. Code, §§ 11405.80, 11455.30; Cal. Code. Regs., tit. 5, § 3088; see *Wyner, supra*, 223 F.3d 1026, 1029 [“Clearly, [California Code of Regulations] § 3088 allows a hearing officer to control the proceedings, similar to a trial judge.”].)



An ALJ may, "order a party, the party's attorney or other authorized representative, or both, to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay." (Gov. Code, § 11455.30, subd. (a); Cal. Code. Regs., tit. 5, § 3088, subd. (a).) An order to pay expenses is enforceable in the same manner as a money judgment or by seeking a contempt of court order. (Gov. Code, § 11455.30, subd. (b).)

"Actions or tactics" is defined as including, but not limited to, making or opposing motions or filing and serving a complaint. (Gov. Code, §11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(1).) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party. (Gov. Code, § 11455.30, subd. (a); Code Civ. Proc., § 128.5, subd. (b)(2).) A finding of "bad faith" does not require a determination of evil motive, and subjective bad faith may be inferred. (*West Coast Development v. Reed* (1992) 2 Cal.App.4<sup>th</sup> 693, 702.) However, the imposition of sanctions requires a showing that the actions were meritless *or* frivolous *and* that the action was pursued in bad faith. (*Campbell v. Cal Gard Sur. Services, Inc.* (1998) 62 Cal. App. 4<sup>th</sup> 563, 574, emphasis in the original.)

Student seeks sanctions on the grounds that Pacific Grove's motion to dismiss was frivolous and misrepresented the scope of the waiver and release of claims in the July 2023 settlement agreement. Pacific Grove argues that its motion to dismiss was not frivolous or brought for an improper purpose.

Although Student argues the motion to dismiss was frivolous, she offers no evidence Pacific Grove's motion was filed in bad faith. Although the parties disagree about the scope of the parties' waiver and release of claims, Student did not establish

Pacific Grove's motion to dismiss was both frivolous and pursued in bad faith.  
Therefore, Student's request for sanction is denied.

## ORDER

1. Pacific Grove's motion to dismiss is granted as to Issue 2 in the complaint.
2. Pacific Grove's motion to dismiss is denied as to Issues 1, 3, 4, and 5 in the complaint. The due process hearing will proceed as scheduled as to these issues.
3. Student's request for sanctions is denied.

IT IS SO ORDERED.

*Jennifer Kelly*

Jennifer Kelly

Administrative Law Judge

Office of Administrative Hearings