BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT AND

CHAFFEY JOINT UNION HIGH SCHOOL DISTRICT.

OAH CASE NUMBER 2020120161

ORDER DENYING MOTION TO DISMISS ISSUE 1, GRANTING MOTION TO DISMISS ISSUE 6, AND DENYING THE MOTION FOR SANCTIONS

DECEMBER 24, 2020

On December 1, 2020, Parent on behalf of Student filed a request for due process hearing with the Office of Administrative Hearings, naming Etiwanda School District and Chaffey Joint Union High School District. The request for due process is referred to as a complaint. The Office of Administrative Hearings is referred to as OAH.

On December 18, 2020, Etiwanda filed a motion to dismiss Issues 1 and 6, and for sanctions. On December 23, 2020, Student filed an opposition.

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, or FAPE, 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, or IDEA. (*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, or CDE, 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 FAPE as a result of the violation of

a mediated settlement agreement. However, a breach of a settlement agreement should be addressed by the CDE's compliance complaint procedure.

DISCUSSION

Student's complaint alleges that Student negotiated a settlement agreement with Etiwanda at the end of the 2018-2019 school year, prior to her transition to Chaffey Union for ninth grade for the 2019-2020 school year, which provided for both changes in Student's IEP to less time in general education and a temporary increase in speech therapy, and for compensatory instructional services at Lindamood Bell. Student alleges that Etiwanda did not timely forward the terms of the settlement agreement to Chaffey Union, or provide Lindamood Bell services during COVID-19 pandemic school closures.

Student raises two claims against Etiwanda. First, at Issue 1, that Student was denied a FAPE in the 2019-2020 school year when the changes in Student's IEP were not timely conveyed to Chaffey Union. Second, at Issue 6, that Etiwanda should continue to fund Lindamood Bell services in accordance with the settlement agreement.

Etiwanda moves to dismiss Issue 1 as barred by a settlement agreement, and Issue 6 as outside of OAH jurisdiction. Etiwanda also moves for sanctions against Student's counsel for bringing Student's claim at Issue 1.

Etiwanda argues that, as part of the settlement agreement, Student waived any and all claims against Etiwanda through June 30, 2019, the last day of the 2018-2019 school year, and that Etiwanda had no further obligation to Student after Student matriculated to high school. Etiwanda submits the sworn declaration of its special education administrator, who states that the last day of the 2018-2019 school year was June 27, 2019, and authenticates an attached copy of the June 7, 2019 settlement agreement between Student and Etiwanda. The attached settlement agreement

includes a waiver of claims through June 30, 2019. Etiwanda contends that as it was only responsible for a FAPE through June 27, 2019, and Student waived claims through that date, it cannot be responsible for any FAPE claims.

At Issue 1, Student alleges that Etiwanda failed to timely amend and forward Student's IEP to Chaffey as agreed, which led to Chaffey implementing an incorrect and inappropriate educational program for Student. Issue 1 is not alleging a mere attempt to enforce a settlement agreement. It contends that Etiwanda's actions or inactions in breach of the settlement agreement resulted in a denial of FAPE. Whether Etiwanda's breach of the settlement agreement denied Student a FAPE, and whether Etiwanda's affirmative defense that a claim arising from such a breach was waived, are issues within OAH jurisdiction.

Issue 6, on the other hand, is no more than a breach of settlement agreement claim. The complaint alleges, and the attached settlement agreement expressly states, that the Lindamood Bell services were compensatory, and as such, not a part of Student's FAPE. OAH does not have jurisdiction over such claims. Student may bring this claim against Etiwanda before the CDE through the statutory compliance complaint procedures.

As OAH has jurisdiction to hear Issue 1, Etiwanda is not entitled to an award of sanctions against Student's counsel for including that claim in Student's due process hearing request.

Accordingly, Etiwanda's motion to dismiss will be granted in part and denied in part, and the motion for sanctions will be denied.

ORDER

1. Etiwanda's motion to dismiss Issue 1 of Student's complaint as barred by a settlement agreement and outside of OAH jurisdiction is denied.
2. Etiwanda's motion to dismiss Issue 6 as outside of OAH jurisdiction is granted. Issue 6 of Student's complaint is dismissed as to Etiwanda.
3. Etiwanda's motion for sanctions is denied.
4. All currently scheduled dates remain on calendar as to Etiwanda.

Alexa Hohensee
Alexa Hohensee (Dec 24, 2020 14:09 PST)

Alexa Hohensee

Administrative Law Judge

Office of Administrative Hearings