BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016100772
v.	ORDER GRANTING MOTION TO DISMISS, IN PART, AND ORDER BIFURCATING HEARING
ELK GROVE UNIFIED SCHOOL DISTRICT.	

On October 12, 2016, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings, naming Elk Grove Unified School District as the respondent.

On November 9, 2016, Elk Grove filed a motion to dismiss the case because OAH lacks jurisdiction over the complaint's issues that involve the alleged breach of a March 2015 settlement agreement between the parties, the issues are barred by the settlement's waiver, and/or the issues were determined by a July 2016 OAH Decision between the parties. District's motion is supported by declaration and exhibits.

On November 14, 2016, Student filed an opposition to the motion to dismiss, arguing OAH had jurisdiction because the claims raised in the complaint were for a denial of a free appropriate public education resulting from a breach of the settlement agreement and because the July 2016 OAH Decision was wrong. Student's opposition included exhibits but was not supported by declaration.

SUMMARY OF DISPUTE[1]

Student is a six-year-old boy who lives with Parent within the geographical boundaries of District. Student was originally made eligible for special education in May 2014 by the Fullerton Union School District, in which he was then residing. Student's residence changed to Elk Grove in summer 2014 and Parent registered Student with District in September 2014. District held IEP team meetings in October 2014. Parent disputed District's offer of placement and services as not comparable to the IEP from Fullerton, not

[1] This summary consists of facts not in controversy, garnered from the moving and opposing papers, the March 2015 settlement agreement, and the documents related to prior OAH orders and decisions involving the parties.

providing FAPE in the least restrictive environment, and not providing appropriate related services.

Student filed a due process complaint in October 2014 (OAH no. 2014100698). District filed a due process complaint in January 2015 (OAH no. 2015010203), stating that it needed to assess Student in order to make an offer of FAPE and seeking an order permitting assessment without parental consent. Both matters were resolved by a March 2015 settlement agreement.

March 16, 2015, Settlement Agreement

The March 2015 settlement agreement resolved Student's October 2014 complaint and District's January 2015 complaint, by generally agreeing to Student's placement while District conducted assessment of Student. The agreement is nine pages of numbered, single spaced paragraphs. Both parties submitted identical copies of the settlement agreement.

The settlement agreement addressed four matters that are relevant to this motion to dismiss. First, the agreement specified Student's placement and related services for the remainder of the 2014-2015 school year and the 2015-2016 school year. The agreement specifically noted that the terms are a compromised resolution and did not anywhere indicate that the specified placement and services were FAPE.

Second, the agreement's paragraph 3 provided for specified District assessments of Student, which were also listed in an attached assessment plan that Parent executed with the agreement. Parent agreed to work cooperatively with District assessors to assure timely completion of District's assessments.

Third, the agreement provided for a "Student's IEP Review Meeting" to review the District assessments, within the 60-day timeline from District's receipt of the executed assessment plan. At this IEP meeting, District would offer changes to Student's IEP following the IEP team's review of the assessments. (Paragraphs 3A and 3B.) Further, in paragraph 5, the parties agreed to a specified stay-put placement in the event that the parties had a dispute regarding Student's educational placement following the Student's IEP Review Meeting.

Fourth, the agreement provided that the parties fully and finally resolved all actual and potential issues and disputes against District relating to Student's educational program, under IDEA, ADA, the Rehabilitation Act, the California Education Code, and all statutes related to the provision of FAPE *through the date of the Student's IEP Review Meeting*. (Recitals, Paragraph E). Further, as part of the waiver of claims in paragraph 9, Parents on behalf of Student waived any right to file a due process complaint with OAH, any legal action in any court, or any complaint with the California Department of Education, Office of Civil Rights or any other administrative or public agency, regarding the disputes resolved by the agreement and any other matter pertaining to Student's education involving the District. Parents, however, could file a Compliance Complaint with the Department of Education, or

an action in State or Federal Courts, alleging District's failure to implement the terms of the agreement.

Student's Attendance, Assessments, and IEP Review Meeting

Student did not begin to attend class at a District school until after the agreement, on March 23, 2015. Parent withdrew Student on May 7, 2015 and Student has not since attended a District school. Student is now attending a private school.

District scheduled IEP meetings in May 2015. Most of the assessments to which Parent had agreed in the settlement were under way but incomplete when Parent withdrew Student. The assessments could not be reviewed and, therefore, the meetings were not the Student's IEP Review Meeting, as defined in the March 2015 Settlement Agreement. No such meeting has since taken place because the District has not completed its assessment of Student.

District's August 2015 Due Process Complaint

District filed a request for due process with OAH in on August 12, 2015, asserting that Parents had failed to cooperate, in accordance with the March 2015 settlement agreement, to complete the District assessments (OAH no. 2015080481). District sought an order directing Parents to cooperate with District so the assessments could be completed.

Student, through James D. Peters, III, filed a motion to dismiss, asserting that OAH did not have jurisdiction to hear alleged breaches of a settlement agreement. OAH agreed and, on September 11, 2015, dismissed District's case because OAH lacked jurisdiction.

Student's August 2015 Due Process Complaint

Mr. Peters filed a due process complaint, on behalf of Student, with OAH on August 24, 2015 (OAH no. 2015090077). Student raised multiple claims against District stemming from the alleged breach of the March 2015 settlement agreement. District filed a motion to dismiss because OAH did not have jurisdiction to hear matters based upon breach of the settlement agreement. Student opposed, asserting that the settlement agreement intended to provide Student a FAPE and District's breach denied Student a FAPE.

OAH granted District motion to dismiss, noting that the March 2015 settlement agreement unambiguously states the placement was a compromise and the agreement does not anywhere state or imply that the placement and related services were intended to provide Student with a FAPE. Student's subsequent motion for reconsideration was denied.

District's February 2016 Due Process Complaint

District filed a request for due process with OAH on February 19, 2016, asserting that Parents had failed to sign and return an assessment plan provided Parent in January 2016.

This assessment plan was outside the earlier settlement agreement between the parties. District stated that it was unable to comply with the IDEA to make an offer of FAPE based upon assessment of Student (OAH no. 2016020899). District sought a ruling allowing District assessment of Student and that Parents must make Student available for assessment. Further, if Parent did not make Student available for assessment, Student would not be entitled to continued special education and related services until such time as Student was made available.

District's February 2016 due process went to hearing in June 2016 before Administrative Law Judge Charles Marson, who issued a July 3, 2016 Decision in District's favor. Judge Marson found that District was entitled to assess Student according to the January 2016 assessment plan, that District would be allowed to proceed with those assessments in the absence of parental consent, and that Parent was to cooperate in assessment, as specified in the Decision's orders.

Judge Marson further ordered that if Parent did not present Student for assessment as specified in the Decision orders, or did not timely complete and return any documents as specified, District was not obligated to further provide special education and related services to Student, or otherwise to accord Student the rights of a special education student, until such time as Parent complied with the Decision's Orders.[2]

Student's October 2016 Due Process Complaint and Prehearing Conference

The prehearing conference in this matter was held on November 14, 2016, before Judge Marson. Student's complaint makes a myriad of assertions. Judge Marson reviewed the complaint in the prehearing conference and framed the issues, as stated in his Prehearing Conference Order. Student's issues fall into three timeframes: September 2014 to the March 16, 2015 settlement agreement; the March 2015 settlement agreement until the end of the 2015-2016 school year; and issues related to the 2016-2017 school year.

APPLICABLE LAW

OAH's Limited Jurisdiction

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,

[2] Mr. Peter's opposition to District's motion to dismiss herein contains pages of argument as to why Judge Marson's decision is wrong, asserting numerous defenses which Mr. Peter's did not have the opportunity to present. These arguments are best reserved for an appeal to District court and are not considered persuasive in the ruling upon this motion to dismiss.

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 [hereafter *Wyner*].)

OAH's limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the district agreed to provide certain services. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student initiated another due process hearing, and raised, inter alia, six issues as to the school district's alleged failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, found that the issues pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was upheld on appeal. The *Wyner* court held that "the proper avenue to enforce SEHO 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 SEHO order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to "merely a breach" of the mediated settlement agreement that should be addressed by the California Department of Education's compliance complaint procedure.

Interpretation of Settlement Agreement Language

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.)

DISCUSSION

The 2014-2015 School Year and 2015-2016 School Year[3]

The March 2015 settlement agreement addressed all issues related to District's provision of special education placement and related services, up to the time of the agreement, as well as the remainder of the 2014-2015 school year and all of the 2015-2016

[3] All references to a school year include extended school year.

school year. Citing *Wyner*, District argues that all claims related to these time periods are not within OAH's jurisdiction because they hinge upon a determination that District breached the March 2015 settlement agreement. Student's opposition argues that District's breach of the settlement agreement denied Student a FAPE, falling within the exception outlined in *Pedraza*.

Student incorrectly relies upon *Pedraza*. In *Pedraza*, the terms of the settlement stated that the parties intended to provide the student a FAPE by the agreement. Additionally, pursuant to a noncompliance complaint, the Department of Education had determined that the district had breached the agreement. Therefore, the *Pedraza* court correctly determined that the breach denied the student a FAPE and was properly before OAH.

Student fails to identify any settlement terms that state the agreed upon placement and services were intended to provide Student a FAPE. Further, Student fails to demonstrate that the intent of the agreement was to offer a FAPE to Student prospectively. The settlement agreement itself states that "[t]his agreement represents the collaborative compromise of disputed claims or causes of action as a way to resolve actual and potential litigation and to prevent further litigation." There is no indication anywhere in the settlement that the agreed upon terms were designed to provide FAPE to Student. As noted in the agreement, a compliance complaint may be made with the Department of Education or an action for breach may be filed in state or federal court. Under *Wyner*, though, OAH does not have jurisdiction to hear these claims of breach and the consequences of such breach.

District also seeks dismissal, contending the settlement agreement's waiver bars the Student's complaint in its entirety. Parent waived all FAPE claims under the IDEA in the March 2015 settlement agreement until the Student's IEP Review Meeting, at which District was going to review the assessment results and make an offer of placement and related services. The undisputed evidence is that the assessments enumerated in the agreement were never completed and, as such, there could not have been a Student's IEP Review Meeting, as defined and agreed to in the settlement agreement.

District argues that the waiver continues to apply to all FAPE claims, up to the present, because the Student's IEP Review Meeting has yet to occur. Here, District is overreaching. The clear terms of the March 2015 settlement establish that the agreement was to enable District to complete its assessments and make its offer of FAPE for the remainder of the 2014-2015 school year and the 2015-2016 school year. To extend any waiver beyond the 2015-2016 school year would expand the agreement and its waivers beyond the time period contemplated by the parties in their written settlement.

District has successfully demonstrated that Student's issues related to the 2014-2015 school year through the 2015-2016 school year were addressed in the March 2015 settlement agreement and that these issues are hinged upon OAH finding that District breached the settlement agreement. Under *Wyner*, OAH does not have jurisdiction over Student's claims of breach and the consequences of such breach because the settlement was not intended to

provide a FAPE. Further, District has established that the settlement's FAPE waiver continued to the conclusion of the time period addressed in the settlement agreement because the termination event (Student's IEP Review Meeting) has yet to occur.

Accordingly, for the reason discussed above, District motion to dismiss is granted as to all issues related to the time period from September 2014 until the conclusion of the 2015-2016 school year.

Issues Related to the 2016-2017 School Year and Bifurcation

The July 2016 OAH Decision in favor of District found that District was entitled to proceed with the assessments listed in the January 2016 assessment plan, without parental consent. The District demonstrated that the assessments were necessary before it could make an offer of placement and related services. Judge Marson also ordered that if Parent did not present Student for assessment as specified in the Decision orders, or did not timely complete and return any documents as specified, District was not obligated to further provide special education and related services to Student, or otherwise to accord Student the rights of a special education student, until such time as Parent complied with the Decision's Orders.

Student's complaint asserts issues related to District's failure to meet its obligations related to the provision of FAPE for the 2016-2017 school year, including placement, related services, and appropriate assessments. These assertions are dependent upon Student being entitled to receive special education placement and services from District for the 2016-2017 school year.

If the assessments ordered in the July 2016 OAH Decision have not been completed, the question exists as to the reason. If Parent failed to comply with the Decision's orders, thus preventing completion of the assessments, District is not obligated to provide special education or related services to Student, including the 2016-2017 school year. Student would not be able to assert the remaining issues herein. If the assessments have been completed, or the reason the assessments have not been completed is other than Parent's failure to comply with the Decision's orders, then Student would be able to assert the remaining issues.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure. Here, the motion to dismiss claims related to the 2016-2017 school years are not limited to matters that are facially outside of OAH jurisdiction, but instead requires a ruling upon evidence taken at hearing. Therefore, the motion to dismiss is denied, without prejudice, as to those issues related to the 2016-2017 school year. Instead, the motion to dismiss the remaining issues will be decided after a bifurcated hearing regarding whether District is obligated to provide Student with special education and related services for the 2016-2017 school year.

Federal and state laws pertaining to special education due process administrative proceedings do not contain a specific reference to the procedure for bifurcating issues at trial. Such authority resides in the discretion of the administrative law judge, provided the separate hearings are conducive to judicial economy or efficient and expeditious use of judicial resources. (See Gov. Code, § 11507.3, subd. (b).)

Generally, OAH will bifurcate a hearing where the resolution of a threshold question will determine whether the remainder of a hearing will be necessary. For example, OAH will bifurcate the issue of whether a student is or was a resident of a school district named as a respondent in a complaint to determine if the district was appropriately named as a party. OAH has also bifurcated specific legal issues such as the statute of limitations because a determination of that issue may reduce or eliminate issues and determine whether the remainder of the hearing will be necessary. Bifurcation limiting parties or issues furthers judicial economy by dismissing a named respondent from a complaint, or by finding that no complaint exists against a respondent due to the student's lack of residency, or that the issue is barred by the statute of limitations.

Here, bifurcation and determination of whether District is obligated to provide special education and related services to Student will determine whether Student may assert claims related to District's FAPE obligations for the 2016-2017 school year. Accordingly, the hearing on the complaint's remaining issues is bifurcated. The hearing will first take evidence and argument for the administrative law judge's determination of whether District is obligated to provide special education and related services to Student, as outlined in Judge Marson's July 2016 Decision. If Student is not entitled to receive special education and related services, the complaint's remaining issues may be dismissed and the due process is concluded. If Student is entitled, the hearing may proceed on the remaining issues.

ORDER

1. District's motion to dismiss is granted as to all issues related to the 2014-2015 and 2015-2016 school years, which are as follows:

   a. Issue One, in its entirety;
   b. Issue Two, in its entirety; and
   c. Issue Four, and all subparts thereof, which relate to the 2014-2015 and 2015-2016 school years

2. District's motion to dismiss is denied, without prejudice, as to all issues related to the 2016-2017 school year. These issues remain for hearing and are as follows:

   a. Issue Three, in its entirety; and
   b. Issue Four, and all subparts thereof, which relates to the 2016-2017 school year

3. The due process hearing on remaining issues will be bifurcated. The Administrative Law Judge will first take evidence and argument as to whether District is obligated to provide special education and related services, as outlined in Administrative Law Judge Charles Marson's July 2016 Decision. If the Administrative Law Judge determines that District is obligated to provide special education and related services, then the hearing will proceed on the remaining issues, as listed in Order 2 above. If it is determined that District is not obligated to provide special education and related services, then the remaining issues and the complaint shall be dismissed.

IT IS SO ORDERED.

DATE: November 17, 2016

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings