BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE CONSOLIDATED MATTERS INVOLVING:

PARENT ON BEHALF OF STUDENT,

and

FOLSOM-CORDOVA UNIFIED SCHOOL DISTRICT,

OAH CASE NUMBER 2022080541

OAH CASE NUMBER 2022080167

ORDER GRANTING IN PART MOTION TO DISMISS BASED UPON SETTLEMENT AGREEMENT AND DENYING MOTION TO STRIKE AND REQUEST FOR SANCTIONS

SEPTEMBER 29, 2022

On August 18, 2022, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Folsom-Cordova 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 August 4, 2022, Folsom-Cordova filed its own Request for Due Process Hearing naming Student. A motion to consolidate the two cases was granted on August 23, 2022.

On September 8, 2022, Folsom-Cordova filed a motion to dismiss. On September 14, 2022, Student filed an opposition. On September 14, 2022, OAH issued an Order Granting In Part Folsom Cordova's Motion to Dismiss and Motion to Strike Based on a previously executed Settlement Agreement.

The September 14, 2022, Order dismissed Student's Issues 1a, 1b, 2, 4, 5, and 7 for the period prior to and through June 30, 2022. The ALJ explicitly protected any claims arising from the March 24, 2022, IEP or the May 2022 IEP amendment and any conduct or omissions which occurred after June 30, 2022.

On September 21, 2022, Folsom-Cordova filed a second Motion to Dismiss issues 3, 6, and 8 of Student's original complaint arguing that they allege claims prior to and through June 30, 2022 a time that was barred by a settlement agreement both parties entered into on August 21, 2021.

On September 26, 2022, Student filed an opposition to Folsom-Cordova's Motion to Dismiss alleging six issues and asserted that OAH denied Student's motion to Amend on September 16, 2022. Student further argued Folsom-Cordova's second motion to dismiss is frivolous because Folsom-Cordova filed a Request for Due Process Hearing on August 4, 2022, while also filing a Motion to Dismiss all claims arising during the time period to and through June 30, 2022 that are barred by settlement agreement. Student further alleges Folsom-Cordova's Motion to Dismiss should be denied because the settlement was part of a confidential agreement between the parties and not a final decision by OAH. Student asserts that OAH has jurisdiction to hear the dispute as the

violation of the settlement agreement constitutes a denial of FAPE. Student raised a motion to strike Folsom-Cordova's placement in a special day class. And, finally, Student requested sanctions against Folsom-Cordova.

On September 27, 2022, Folsom-Cordova filed an opposition to Student's Motion for Sanctions and Motion to Strike.

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 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

Folsom-Cordova's Motion to Dismiss requests Student's issues 3, 6, 8, and 9 of Student's complaint be dismissed because they allege claims against Folsom-Cordova that occurred prior to June 30, 2022. In the September 14, 2022, Order Granting In Part Motion to Dismiss and Motion To Strike Based Upon Settlement Agreement the ALJ specifically preserved Student's claims arising from the March 2022 IEP and any amendment to that IEP. However, Folsom-Cordova brings a second motion to bar Student from challenging any provision of the March 24, 2022 IEP.

Student's Issues 3 and 6 address substantive FAPE denial claims for the 2022-2023 school year. Both parties acknowledge the IEP offer for that year was made during a March 24, 2022 IEP team meeting. In Issue 3 Student alleges:

- Did District Deny Student A FAPE Bv Failing To Provide Sufficient Programs and Supports Needed To Enable Student To Receive Educational Benefit?
    - Behavior Intervention Services (BIS)
    - Speech and language
    - Occupational therapy

- Adapted Physical Education (APE)

Similarly, Issue 6 asks:

- Did the District Deny Student a FAPE by Failing to Offer Physical Therapy (PT) Needed to Enable Student to Receive Educational Benefit in the 3/24/2022 IEP?

These issues raise both legal and factual questions regarding whether the settlement agreement barred the claims based on when the offer was made. Such questions of law and fact and cannot be decided through the motion process. Thus, Folsom-Cordova's Motion to Dismiss Student's issues 3 and 6 both relate to substantive FAPE denial claims is denied.

Student's Issue 8 alleges a denial of parent's requests *during* an IEP team meeting that occurred during the operative period of the settlement agreement. Student did not allege a denial of FAPE for the failure to substantively offer the requested services Student merely asserted Folsom-Cordova failed to include Parent's requests in the IEP offer. This claim, as pled, is barred by the Settlement Agreement. Folsom-Cordova's Motion to Dismiss Issue 8 is granted.

Student's Issue 9 alleges Folsom-Cordova disclosed the terms of a confidential settlement agreement, thus denying Student a FAPE. OAH does not have jurisdiction to address this issue. The California Department of Education is the appropriate agency to address Student's Issue 9. Folsom-Cordova's Motion to Dismiss Issue 9 is granted.

OAH has jurisdiction over Issues 3 and 6. OAH does not have jurisdiction over Issues 8 and 9.

STUDENT'S MOTION TO AMEND

Student alleges OAH denied Student's Motion to Amend alleging the ALJ in her ruling on Folsom-Cordova's first Motion to Dismiss stated "Student didn't cite to all of the same pages and line references addressed by the motion." In reviewing the previous Order, this statement is misleading and disingenuous. The above statement referenced the ALJ's determination that Folsom-Cordova's request to dismiss Student's proposed resolutions as a motion to strike. OAH denied Student' Motion to Amend because Student requested leave to amend but did not file a proposed amended complaint.

An amended complaint may be filed when the other party consents in writing and is given the opportunity to resolve the complaint through a resolution session, or when the hearing officer grants permission. The hearing officer may grant permission at any time more than five days before the due process hearing. (20 U.S.C. §1415(c)(2)(E)(i).) The filing of an amended complaint restarts the applicable timelines for the due process hearing. (20 U.S.C. §1415(c)(2)(E)(ii).)

To date, no Motion to Amend has been filed by Student. Should Student file a proper motion to amend, Student is on notice that Student must contemporaneously file a proposed First Amended Complaint. The amended compliant must not reference or attempt to incorporate by reference claims in the original complaint. Rather, it must be single independent complaint that includes all issues and supporting facts Student seeks to adjudicate.

STUDENT'S MOTION TO STRIKE

Student alleges Folsom-Cordova's August 4, 2022 Request for Due Process should be struck because the March 24, 2022 and May 2022 IEP team meetings where

Folsom-Cordova's offer of FAPE was finalized occurred prior to June 30, 2022. Folsom-Cordova requested an order from OAH that determines whether Folsom-Cordova's May 2022 IEP offer of placement and services reasonably calculated to provide Student a FAPE in the least restrictive environment, LRE, such that Folsom-Cordova may implement this IEP absent Parent's consent?

Student conflates a voluntary waiver that both Student and Folsom-Cordova entered into with the August 16, 2021 settlement agreement with Folsom-Cordova's on-going obligation to provide Student a FAPE. Student's Motion to Strike is denied.

STUDENT'S REQUEST FOR SANCTIONS

Student alleges Folsom-Cordova should be sanctioned under Rule 11(b)(1). Student rehashes the three-prong analysis of Rule 11. Student concludes with "District failed to provided *any* evidence, or effort, to demonstrate good cause to dismiss Student's case." In Student's opposition to Folsom-Cordova's original Motion to Dismiss Student admitted in a pleading signed by Attorney Sheila Bayne to five instances of erroneously stated facts in his original complaint. Student's motions are conclusory, lack candor, and are often confusing. However, Student has now resorted to a tactic seeking to punish opposing counsel through the threat of sanctions. Folsom-Cordova is well within its legal rights to file timely prehearing motions and file for Due Process. This is not evidence of bad faith. Counsel is sternly cautioned that frequent requests for sanctions without sufficient evidence can itself rise to actions or tactics that are frivolous

or solely intended to cause unnecessary delay. (Code of Civ Proc Section 128.5.) Each allegation of bad faith tactics expends significant judicial resources. Student's Request for Sanctions is denied.

IT IS SO ORDERED.

Tiffany Gilmartin
Tiffany Gilmartin (Sep 29, 2022 06:21 PDT)

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings