BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. NEW HAVEN UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013031128 ORDER GRANTING MOTION TO DISMISS NON-EXPEDITED PORTION OF CASE

On March 28, 2013, Student's parents on behalf of Student (Student) filed a request for a due process hearing (complaint), naming the New Haven Unified School District (District) as the respondent.

On April 2, 2013, the District filed a motion to dismiss portions of Student's complaint on the basis that they are barred by a prior settlement agreement between the parties. On April 4, 2013, Student filed an opposition to the District's motion. On April 5, 2013, the District filed a reply.

The District's motion to dismiss involves issue one and part of issue two of Student's complaint. Issue one of Student's complaint alleges: "Was Student's physical altercation with a staff member the direct result of Respondent's failure to implement Student's Individualized Education Plan (IEP)?"

Issue two of Student's complaint alleges: "Was Student's October 26, 2012 behavior a manifestation of her disability?"

The District argues that a settlement agreement of the parties prevents Student from raising issue one and part of issue two. The settlement agreement was entered on January 7, 2013. The agreement recites the nature and status of the settlement as follows:

> The purpose of this Agreement is to resolve any and all disputes, causes of actions, and claims concerning Student's special education and related services, including all issues that were raised or could have been raised in relation to the expedited and non-expedited due process hearings in OAH case number 2012110880, arising or occurring up through the date of full execution of this agreement.

The agreement contained a release of claims which stated:

> Parent hereby fully releases and discharges the District including, but not limited to, its past and present officials, employees, successors, predecessors, heirs, assigns, agents, attorneys, consultants, affiliates, and representatives of and from any and all past and present claims, obligations, actions, judgments, damages, liabilities, demands, complaints, and causes of action that were or could have been raised in OAH Case No. 2012110880, including but not limited to claims arising under the California Education Code (related to special education), the Individuals with Disabilities Education Act ("IDEA") (including the 2004 reauthorization), the Americans With Disabilities Act, the Unruh Act, and Section 504 of the Rehabilitation Act of 1973, whether known or unknown, which they now have or hold, or at any time had or held against the District, through the date of execution of this agreement. Notwithstanding the foregoing, Parent does not release any claims or causes of action related to personal injury. Notwithstanding the foregoing, nothing in this Agreement shall preclude parent from challenging the [manifestation determination] conducted pursuant to paragraph 2.B., above, or from presenting evidence existing prior to the date of this Agreement.

Section 2.B. of the agreement stated:

> The District agrees to conduct a manifestation determination (MD) review following the District's review in paragraph 2.A., above. At the MD review, all relevant staff members, Parent, and Parent's independent professional shall determine whether Student's October 26, 2012 conduct was caused by, or had a direct and substantial relationship to, Student's ADHD. The MD review shall take place on or before February 22, 2013.

The manifestation determination review contemplated by the settlement agreement was held in February 2013. Neither party included a full copy of the manifestation determination documentation with their moving or opposing papers. (Student's opposition attached two pages out of 12.) In the motion to dismiss filed by the District, the District described the findings of the February 2013 manifestation determination as follows:

> On February 19, 2013, the District convened the MD review contemplated in paragraph 2.B. of the agreement. The District found that Student's October 26, 2012 conduct, in which she punched and kicked an administrator, was not caused by, or substantially related to, Student's disability. In addition, although not required by the Settlement Agreement, the District determined that Student's conduct was not due to a failure of the District to implement Student's IEP.

The District acknowledges that the waiver language in the settlement agreement does not prevent Student from challenging the February 2013 manifestation determination.

However, the District argues that, under the terms of the settlement agreement, Student is limited to contesting "whether Student's October 26, 2012 conduct was caused by, or had a direct and substantial relationship to, Student's ADHD." The District argues that Student's issue one is barred because it does not involve that matter. The District also seeks to dismiss the part of Student's issue two that deals with a visual processing disorder, not ADHD.

In Student's opposition, Student contends that the first issue in Student's complaint does not allege a general denial of a free appropriate public education (FAPE) by the District, but instead challenges the February 2013 manifestation determination that Student's conduct was not due to a failure by the District to implement the IEP.

If Student's first issue challenges the February 2013 manifestation review, then it is not barred by the settlement agreement. The District may have wished to limit the manifestation determination review to just one issue, but its own moving papers admit that the findings made by the team were not so limited. If the manifestation team felt it necessary to find that Student's conduct was not due to a failure of the District to implement Student's IEP, then Student may properly challenge that finding. There is nothing in the settlement agreement that stops Student from challenging any of the findings made in the February 2013 manifestation determination. Likewise, Student's second issue challenges the February 2013 manifestation determination, so there is no basis to dismiss issue two or any part of it at this time.

On the other hand, the District's concerns have merit for a different reason. Student's first issue as alleged in the complaint is ambiguous and poorly worded. It is not clear from the language in Student's issue one whether Student is alleging a FAPE violation based on conduct which occurred prior to the settlement agreement or if Student is just using that as background to challenge the findings made as a result of the manifestation review in February 2013. The language Student uses in the issue is very general and is not tied specifically to the February 2013 manifestation determination. Even the OAH staff was confused by the language of Student's first issue and set this matter for hearing as both an expedited and non-expedited case.

Judging by the rest of Student's complaint, it appears that, despite the ambiguous pleading, Student intended to challenge the February 2013 manifestation determination, not to allege a general FAPE claim. For example, Student's complaint requested only an expedited hearing, not a non-expedited hearing. Given the expedited nature of the proceeding, it would seem unfair to penalize Student for what amounts to poor pleading by Student's counsel. It seems more equitable to limit the issue to what Student's counsel claims Student alleged, rather than to dismiss issue one and force Student to file the case a second time (thereby delaying any expedited relief).

Therefore, the District's motion is granted in part and denied in part. To the extent that Student's case involves non-expedited issues regarding a denial of FAPE, the motion to dismiss is granted. To the extent that the complaint challenges the findings made at the

February 2013 manifestation determination review, the complaint may go forward as an expedited proceeding.

Both issues one and two may proceed as expedited matters challenging the February 2013 manifestation determination review. Any factual allegations included in Student's complaint for events prior to the settlement agreement are relevant to the case only insofar as they relate to that February 2013 manifestation determination. Likewise, any remedies would be limited to those permissible in an expedited proceeding.

If Student intended to allege any non-expedited issues relating to a denial of FAPE which occurred after the date of signing the settlement agreement, Student will have to bring a separate due process hearing request alleging those issues. The current case will proceed forward on issues one and two *only* to the extent that they challenge the findings of the February 2013 manifestation determination review.

ORDER

1. The District's Motion to Dismiss is granted in part. The non-expedited portion of this case is hereby dismissed and all non-expedited dates are vacated.

2. The matter will proceed as an expedited case on Student's issues one and two to the extent that those issues challenge the manifestation determination review held in February 2013.

3. All mediation, prehearing conference, and hearing dates in the expedited portion of this case will remain on calendar as currently set.

Dated: April 9, 2013

/s/
SUSAN RUFF
Administrative Law Judge
Office of Administrative Hearings