

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BONITA UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2012090753

ORDER GRANTING IN PART AND  
DENYING IN PART DISTRICT'S  
MOTION TO DISMISS

On October 2, 2012, the Bonita Unified School District (District) filed a motion to dismiss various claims in Student's due complaint. On October 5, 2012, Student filed an opposition. On October 10, 2012, District filed a reply.

District's motion seeks dismissal of (i) the individuals named as respondents, (ii) all claims arising prior to August 9, 2011 as waived by a prior settlement agreement between the parties dated August 8, 2011 (the settlement agreement), or arising prior to September 21, 2010 as beyond the statute of limitations, (iii) discrimination and retaliation claims, and (iv) claims requiring enforcement of the settlement agreement. Student does not oppose dismissal of the individual respondents or discrimination and retaliation claims. However, Student contends that the settlement agreement was incorrectly reduced to writing, that the statute of limitations was tolled due to misrepresentations of the District concerning the effect of the settlement agreement, and that the Office of Administrative Hearings (OAH) has jurisdiction to adjudicate claims alleging a denial of a free appropriate public education (FAPE) resulting from the failure to comply with the terms of a settlement agreement. District, in its reply, contends that the actual events concerning the creation of the settlement agreement are in conflict with the statements in Student's opposition.

*Student's Complaint*

On September 21, 2012, Parent on behalf of Student, a high school senior, filed a due process hearing request (complaint) against District and named teachers, alleging that as a result of Student's ADD/ADHD/Insomnia, Student requires his marks for homework completion and attendance to be reduced to twenty percent of his grade as an accommodation or Student will receive failing grades. Student's complaint also alleges that as a result of mediation in a prior due process proceeding, the settlement agreement provided that Student would be graded with homework and attendance making up only twenty percent of Student's grades, and that Student would receive identified services that would constitute a FAPE for

the 2011-2012 school year.<sup>1</sup> Parent alleges District repeatedly stated that Student's high school grades were being recalculated, and only in September 2012 did Parent discover that District refused to recalculate Student's grades for the 2009-2010 and 2010-2011 school years. The complaint alleges that District failed to provide the services and accommodations promised in the settlement agreement and IEPs, including grade recalculation, resulting in a denial of FAPE. The complaint seeks an order that all Student's past, current and future high school teachers calculate or recalculate Student's grades, that Student receive compensatory services and accommodations, and that the named teachers not retaliate against Student.

### *Individuals as Parties*

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

The individual staff and teachers named as respondents in Student's complaint, Steve Godsey, Karen Oaks, Carla Pickering, Peggy McBeth, Christine Black, Mike Regan, Mark Holman, Greg Bernal and Tolan, are not school districts or other public agencies, and therefore are not subject to due process and will be dismissed.

### *Settlement Agreement Waiver*

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.

As to that portion of District's motion seeking to dismiss Student's claims prior to August 8, 2011 as barred by waiver language in the settlement agreement, or to dismiss claims prior to September 21, 2010 as barred by the statute of limitations, the motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Student's complaint and opposition raise a possible defense to the written waiver, and facts that may toll the statute of limitations, both of which will need to be decided upon a factual inquiry.<sup>2</sup> Accordingly, that portion of District's motion will be denied.

---

<sup>1</sup> A copy of the prior agreement was not attached to the complaint, but was included in District's moving papers. Both parties have put its terms at issue, so it is no longer considered confidential for purposes of these proceedings.

<sup>2</sup> District's reply includes the declaration of Carl J. Coles, who disputes the version of events surrounding execution of the settlement agreement set out in Student's opposition.

### *Discrimination and Retaliation Claims*

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Here, Student does not set forth a discrimination or retaliation claim outside the jurisdiction of OAH, such as a discrimination claim under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.), or other civil rights violations under Section 1983 of Title 42 United States Code. Rather, Student alleges that by being treated differently and denied necessary accommodations for his disability, he has been denied a FAPE. Absent an express reference to other statutes, OAH interprets the complaint as being limited to IDEA issues. The retaliation alleged is refusal to comply with Parent’s requests or the settlement agreement, also resulting in a denial of FAPE. As Student has alleged only claims asserting a denial of FAPE, Student’s claims are within the jurisdiction of OAH under the IDEA, and District’s motion to dismiss on this ground will be denied.

### *Enforcement of Settlement Agreement*

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 (IDEA). (*Wyner v. Manhattan Beach Unified Sch. Dist.*, *supra*, 223 F.3d at pp. 1028-1029.) In *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, the United States District Court for the Northern District of California 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.

Here, Student alleges that the settlement agreement was reached at mediation, and that the settlement agreement delineated the services that would constitute a FAPE for the

2011-2012 school year, but that District failed to provide the services promised. Student does not allege a “mere breach” of the settlement agreement, but a failure to provide services that were agreed upon as necessary elements of a FAPE. OAH has jurisdiction to adjudicate whether or not District’s alleged breach of the mediated agreement resulted in a denial of FAPE to Student, and District’s motion to dismiss Student’s claim to enforce the terms of the settlement agreement will be denied.

ORDER

1. Respondents Steve Godsey, Karen Oaks, Carla Pickering, Peggy McBeth, Christine Black, Mike Regan, Mark Holman, Greg Bernal and Tolan are dismissed from this proceeding.

2. District’s motion to dismiss as to all other issues is denied. The matter will proceed against District as scheduled only as to the remaining issues, which are limited to matters alleging a denial of a FAPE.

Dated: October 12, 2012

/s/

---

ALEXA J. HOHENSEE  
Administrative Law Judge  
Office of Administrative Hearings