

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015120931

ORDER PARTIALLY GRANTING
MOTION TO DISMISS

Student filed a second amended complaint on February 11, 2016. District filed a motion to dismiss the second amended complaint on March 9, 2016. Student filed an opposition to District's motion on March 14, 2016.

LEGAL AUTHORITY

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 [hereafter *Wyner*].)

This 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.

DISCUSSION

Student’s second amended complaint raises six issues. District seeks to dismiss Issues 1, 2, 4, 5, and 6, and Issue 3 for any claims arising prior to September 15, 2015.

The parties entered into a negotiated settlement agreement which was fully executed on September 15, 2015, an authenticated copy of which District included in its motion. Student’s attorney and District’s attorney approved the Agreement as to form and content at the time of execution. District contends the Agreement bars Student’s Issues 1, 2, 4, 5, and 6, and partially bars Issue 3. Student opposes the motion, arguing District breached provisions of the Agreement, and therefore it is no longer in effect and the Agreement only applied to the Federal District Court matter out of which the Agreement arose.

Paragraph 1.1 of the Agreement is a general release that “releases and forever discharges District from any and all educational claims, demands, obligations, actions, causes of action, rights, and related claims for attorneys’ fees and costs, which [Student] now has, or which may hereafter accrue or otherwise be ascertained” arising out of any actions Student alleged relating to District’s violation of the IDEA which resulted in the Federal District Court case. Paragraph 1.6 acknowledges that Student also waived any unknown claims against District at the time of executing the final release under California Civil Code section 1542.

Paragraph 2.1 specifies the terms of the Agreement relating to Student’s educational program. In particular, paragraph 2.1.2 alleges District shall provide Student with a new iPad for use at home.

Issue 1 of the second amended complaint alleges District failed to provide Student with appropriate supplemental supports to participate safely in an afterschool program in 2014-2015, and 2015 “to present.” This issue also includes assertions that District violated the Americans with Disabilities Act, the Rehabilitation Act of 1973. The claim does not allege District breached the Agreement and as a result denied Student a FAPE. OAH has no jurisdiction to hear claims based upon District’s breach of the September 15, 2015 Agreement. Therefore, pursuant to the terms of the Agreement, Issue 1 is limited to the time frame from September 16, 2015 to February 11, 2016, the date of filing of Student’s second amended complaint. Further, Student’s claims for violations of the ADA and the Rehabilitation Act of 1973 are outside of OAH jurisdiction and are dismissed.

Issue 2 alleges District failed to evaluate Student in all areas of suspected disability, specifically relating to vision screening in connection with the April-May 2015 IEP. Student claims District failed to provide prior written notice why it would not conduct the assessment. Student also alleges that Parent notified District of Student's need for a Binocular Evaluation at "IEP meetings during the Oct/2014-2015 school year and in the 2015 school year." OAH has no jurisdiction to hear claims arising prior to September 15, 2015 because Student does not allege in this issue that District breached the Agreement causing a denial of FAPE. However, because the reference to the "2015 school year" is ambiguous, the trier of fact must determine whether this claim extends beyond September 15, 2015. Issue 2 is limited to the time frame from September 16, 2015 to February 11, 2016.

Issue 3 alleges claims that both precede the Agreement, and arose after the Agreement. Here again, Student makes no allegations that District breached the Agreement that resulted in a denial of FAPE. Therefore, OAH has no jurisdiction to hear claims arising prior to September 15, 2015. Issue 3 is limited to the time frame from September 16, 2015 to February 11, 2016.

Issue 4 alleges District failed to complete Student's 2015 triennial IEP and the 2015-2016 annual IEP in a timely manner. The facts assert that Parent made requests regarding these IEP's prior to September 15, 2015. Paragraph 2.1.1 of the Agreement addresses in great detail the District's obligation to hold an IEP meeting. Student alleges District has denied Student appropriate supports, services, and educational benefit from September to December of 2015 by failing to hold a timely appropriate IEP. Whether District breached its obligations under the Agreement and as a result denied Student a FAPE for the time period from September 16, 2015 to February 11, 2016, requires factual findings by the hearing officer. District's motion to dismiss Issue 4 is denied.

Issue 5 alleges District failed to provide independent educational evaluations at public expense in the areas of academics, occupational therapy and regarding eligibility during the 2015-2016 school year in response to assessment reports from June 8, 2015. Student alleges that Parent made the request for independent evaluations on November 3, 2015. However, although Parents' request for independent educational evaluations came after the September 15, 2015 Agreement, which encompassed all claims known or unknown prior to that date, the challenged assessments were within the period covered by the Agreement. Student has not alleged that District breached the Agreement as to independent evaluations causing a denial of FAPE. Therefore, the Agreement resolved any claims by Student that District's June 8, 2015 assessment reports entitled Student to independent evaluations. District's motion to dismiss Issue 5 is granted.

Issue 6 alleges District failed to address Student's needs in academics, including failing to provide supports, accommodations, and services during the 2014-2015 school year and the 2014-2015 extended school year. Student alleges District failed to address evidenced-based methodology that would enable Student to access third grade general education core standards. The Agreement released Student's claims for denial of FAPE prior

to September 15, 2015. Student argues in opposition to District's motion that District breached Section 2.1.2 of the Agreement by failing to provide Student with a functional and new iPad. However, Issue 6 does not allege that District's failure to provide a functional and new iPad after September 15, 2015 denied him a FAPE. Therefore, Issue 6 is limited to the time frame September 16, 2015 through February 11, 2016 and to claims that during that time District failed to address evidenced-based methodology to enable Student to access third grade general education core standards.

ORDER

1. District's Motion to Dismiss as to Issues 1, 2 and 3 is partially granted:
 - a. All claims arising under the American with Disabilities Education Act and the Rehabilitation Act of 1973 are dismissed.
 - b. All claims in Issues 1, 2 and 3 arising prior to September 16, 2015 are dismissed.
 - c. All claims in Issues 1, 2 and 3 are limited to the time frame of September 16, 2015 through February 11, 2016.
2. District's Motion to Dismiss Issue 4 is denied.
3. District's Motion to Dismiss Issue 5 is granted.
4. District's Motion to Dismiss Issue 6 is partially granted:
 - a. All claims arising in Issue 6 prior to September 16, 2015 are dismissed.
 - b. Issue 6 is limited to the time frame September 16, 2015 through February 11, 2016 and to claims that, during that time District failed to address evidenced-based methodology to enable Student to access third grade general education core standards.
5. All dates currently set in this matter are confirmed.

DATE: March 16, 2016

DocuSigned by:

Adrienne L. Krikorian

3475616B5EDF4C6

ADRIENNE L. KRIKORIAN

Administrative Law Judge

Office of Administrative Hearings