

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LINDA PEDRAZA, et al.,

Plaintiffs,

v.

ALAMEDA UNIFIED SCHOOL DISTRICT, et
al.,

Defendants.

_____ /

No. 05-04977 CW

ORDER GRANTING
DEFENDANTS' MOTIONS
FOR JUDGMENT ON THE
PLEADINGS AND FOR
SUMMARY JUDGMENT AND
GRANTING MOTION FOR
SUMMARY JUDGMENT ON
COUNTER-CLAIMS
(Docket Nos. 222 and
223)

Defendants California Department of Education (CDE) and the State Superintendent of Public Instruction (together, State Defendants) move for judgment on the pleadings on the claim that they violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq., and Defendants Alameda Unified School District (AUSD) and Alameda Unified School District Board of Education (together, the District) move for summary judgment on the claims that they violated the IDEA and breached a 2003 Settlement Agreement. The District also moves for summary judgment of liability on its counter-claims against Linda and Francisco Pedraza for breach of the 2003 Settlement Agreement and for express indemnity under a provision of that Agreement. Plaintiff Linda

1 Pedraza has filed oppositions and Defendants have filed replies.¹
2 The matters were taken under submission on the papers. Having
3 considered all the papers filed by the parties, the Court grants
4 State Defendants' motion for judgment on the pleadings and the
5 District's motion for summary judgment on Linda Pedraza's claims.
6 The Court also grants summary judgment of liability on the
7 District's counter-claims against the Pedrazas.

8 PROCEDURAL BACKGROUND

9 On December 1, 2005, Plaintiffs Linda and Francisco Pedraza
10 individually and as guardians ad litem of their son MP, filed the
11 original complaint in this action and, on February 23, 2006, filed
12 their First Amended Complaint (1AC) which is the subject of State
13 Defendants' motion for judgment on the pleadings. The 1AC alleged
14 claims against State Defendants, the District and individuals who
15 worked for the District. Pursuant to the Court's orders, all
16 claims against these individual defendants were dismissed and most
17 of the claims against the District were dismissed. The remaining
18 claims against the District were those for a breach of the 2003
19 Settlement Agreement regarding MP's individual education plan (IEP)
20 for the 2003-04 school year (SY) and for violation of the IDEA for
21 the 2003-04 SY based on the breach of the 2003 Settlement
22 Agreement. All claims against State Defendants were dismissed with
23 the exception of a claim for violation of the IDEA based upon State

24 _____
25 ¹The complaint was originally filed by Linda and Francisco
26 Pedraza, husband and wife, and their minor child, MP. Linda
27 Pedraza is the only remaining Plaintiff. Counter-Defendant
28 Francisco Pedraza did not oppose the District's motion for summary
judgment of liability on its counter-claims against him.

1 Defendants' failure to enforce its own May 10, 2004 Compliance
2 Reconsideration Report which had found that the District had
3 breached certain provisions of the 2003 Settlement Agreement.

4 The District asserted six counter-claims against the Pedrazas:
5 (1) breach of contract based on the Pedrazas' failure to perform
6 their obligations under the 2003 Settlement Agreement; (2) express
7 indemnity based on a provision in the 2003 Settlement Agreement;
8 (3) implied indemnity; (4) enforcement of a 2007 mediated final
9 agreement; (5) fraud; and (6) recovery of attorneys' fees. In an
10 October 19, 2009 Order on the Pedrazas' motion to dismiss the
11 counter-claims, the Court dismissed the third counter-claim for
12 implied indemnity and found the allegations sufficient to state all
13 other claims.

14 Ms. Pedraza filed two other cases, C 07-4781 and C 07-5989,
15 asserting claims that MP was denied a FAPE as required by the
16 IDEA.² On December 18, 2007, the Court issued an order
17 consolidating these cases into C 05-4977 CW. (Docket No. 17). On
18 September 30, 2009, the Court issued an order dismissing all claims
19 that Ms. Pedraza had asserted in case C 07-4781, with the exception
20 of one claim against the District: an appeal of the decision of the
21 State Office of Administrative Hearings--Special Education Division
22 (OAH) finding that the District did not deny MP a FAPE during SYs
23 2004-07. (Docket No. 196). In the September 30, 2009 Order, the
24 Court also dismissed all the claims Ms. Pedraza asserted in case C

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26 ²Ms. Pedraza filed case number C 07-4781 on her own behalf.
27 She filed case number C 07-5989 on behalf of MP. Case number C 07-
28 5989 was originally filed in state court. It was removed to
federal court by the District.

1 07-5989 as time-barred.

2 On July 10, 2008, Plaintiffs' attorney was permitted to
3 withdraw. Subsequently, the Court dismissed MP's claims without
4 prejudice because, as a minor, he could not proceed unless he was
5 represented by counsel. The Court also dismissed the claims of
6 Francisco Pedraza because he failed to appear or otherwise
7 prosecute the action. Thereafter, Ms. Pedraza became the sole
8 Plaintiff in this action and is proceeding pro se.

9 FACTUAL BACKGROUND

10 The facts below are taken from the IAC, the documents attached
11 to it, documents that are judicially noticed and the Administrative
12 Record (AR) and, except as noted, are undisputed. MP was born on
13 October 25, 1999 and was later diagnosed with autism. MP's autism
14 makes him eligible for a FAPE under the IDEA. MP and his parents
15 reside in Alameda, California and, thus, MP is entitled to receive
16 a FAPE from the District. In October 2002, the District, through
17 the IEP process, made an offer of placement for MP. The Pedrazas
18 refused to accept the District's offer. On July 24, 2003, the
19 District and the Pedrazas entered into the 2003 Settlement
20 Agreement, which set forth an educational plan that the parties
21 agreed constituted a FAPE for MP for the upcoming 2003-04 SY. Pl's
22 Ex. 2, July 25, 2003 Settlement Agreement, ¶ 5. MP's program was
23 to include behavioral services through the Center for Autism and
24 Related Disorders (CARD), occupational therapy (OT) through SUMA
25 Kids, speech and language services through Children's Hospital of
26 Oakland (CHO) and placement at Son Light Preschool with one-to-one
27 aide support. 2003 Settlement Agreement, ¶¶ 2.B-2.E.

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1 The parties dispute what occurred after the 2003 Settlement
2 Agreement was signed. Ms. Pedraza argues that the District did not
3 provide the services to which it agreed. The District, citing
4 evidence from the administrative record of the subsequent OAH
5 hearing, asserts that it tried to provide behavioral services
6 through CARD, OT services through SUMA Kids, and speech and
7 language services through CHO but that it could not do so because
8 the Pedrazas failed to complete the intake processes for CARD and
9 other behavioral service providers, unilaterally terminated the
10 services of SUMA Kids and instructed CHO to bill the Pedrazas'
11 medical insurance carrier and not to bill the District.

12 In October 2003, the Pedrazas complained to the CDE that the
13 District had not fulfilled its obligations under the 2003
14 Settlement Agreement and the IDEA. The CDE originally found the
15 District in compliance but, on May 10, 2004, after the Pedrazas
16 requested reconsideration, the CDE issued a Compliance
17 Reconsideration Report finding that the District was out of
18 compliance with several provisions of the 2003 Settlement
19 Agreement. The CDE ordered the District to hold an IEP meeting and
20 to take other steps as corrective actions. Pl's Ex. B at 6.

21 On June 7, 2004, the parties met for an IEP team meeting and
22 signed an IEP agreement for MP for the 2004-05 SY. On November 15,
23 2004, the Pedrazas again contacted CDE, stating that the District
24 was not complying with the CDE's May 10, 2004 Compliance
25 Reconsideration Report. On February 8, 2005, the CDE issued a
26 letter stating:

27 The file regarding the above case has been carefully
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1 reviewed and completed. As appropriate, all required
2 corrective actions have been received and duly noted.
Therefore, the case is now closed.

3 Doc. # 226, Pl.'s Ex. C at 28.

4 On August 18, 2005, the Pedrazas filed a complaint with the
5 OAH alleging that the District had failed to provide MP with the
6 services set forth in the 2003 Settlement Agreement and, thus,
7 denied him a FAPE during the 2003-04 SY. On September 2, 2005, the
8 OAH dismissed the claim regarding the 2003-04 SY, finding that it
9 did not have jurisdiction over a settlement agreement. Pl.'s Ex.
10 1.

11 Subsequently, MP, through Ms. Pedraza, filed, under the IDEA,
12 administrative requests for due process hearings with the OAH,
13 alleging that the District had failed to provide him with a FAPE
14 during the 2004-05, 2005-06 and 2006-07 SYs. The District also
15 filed a request for a due process hearing. These requests were
16 consolidated and, on April 2 through April 6, and April 17 through
17 April 20, 2007, a nine-day hearing was held, with both sides
18 presenting witnesses and documentary evidence. Comp. in C 07-4781,
19 Ex. A, June 19, 2007 Administrative Law Judge (ALJ) Decision at 2.
20 The following issues were before the ALJ: (1) were the District's
21 triennial assessments of MP in September, October and November,
22 2005 inaccurate?; (2) should the District have reimbursed the
23 Pedrazas for an Independent Educational Assessment (IEA) conducted
24 by Dr. Allison Lowy Apple?; (3) did the District deny MP a FAPE in
25 the 2004-05, 2005-06 and 2006-7 SYs?; (4) did the District violate
26 the procedural requirements of the IDEA in SY 2006-07 by refusing
27 to convene an IEP meeting from June 20, 2006 to the date of the
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1 hearing?; (5) did the District offer MP a FAPE for SY 2006-07 by
2 offering to place him in the Special Day Class (SDC) at Haight
3 Elementary School, with related services and supports?; and (6) is
4 the District required to reimburse the Pedrazas for the costs of
5 various services provided to MP and is the District required to
6 immediately convene an IEP meeting? Id. at 2-3. The
7 administrative record, consisting of the transcript of the hearing
8 and documentary evidence, is over three thousand pages.

9 On June 19, 2007, the ALJ issued a forty-five page decision
10 finding in favor of the District on all issues. Id. at 45.

11 LEGAL STANDARD

12 I. Judgment on the Pleadings

13 A motion for judgment on the pleadings, like a motion to
14 dismiss for failure to state a claim, addresses the sufficiency of
15 a pleading. Judgment on the pleadings may be granted when the
16 moving party clearly establishes on the face of the pleadings that
17 no material issue of fact remains to be resolved and that the
18 moving party is entitled to judgment as a matter of law. Hal Roach
19 Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th
20 Cir. 1989). The court may consider, in addition to the face of the
21 pleadings, exhibits attached to the pleadings, Durning v. First
22 Boston Corp., 815 F.2d 1265, 1267 (9th Cir. 1987), and facts which
23 may be judicially noticed, Mullis v. United States Bankr. Court,
24 828 F.2d 1385, 1388 (9th Cir. 1987).

25 In testing the sufficiency of a pleading, the well-plead
26 allegations of the non-moving party are accepted as true, while any
27 allegations of the moving party which have been denied are assumed

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1 to be false. Hal Roach Studios, 896 F.2d at 1550. However, the
2 court need not accept conclusory allegations. W. Mining Counsel v.
3 Watt, 643 F.2d 618, 624 (9th Cir. 1981). The court must view the
4 facts presented in the pleadings in the light most favorable to the
5 non-moving party, drawing all reasonable inferences in that party's
6 favor, General Conference Corp. of Seventh Day Adventists v.
7 Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th
8 Cir. 1989), but need not accept or make unreasonable inferences or
9 unwarranted deductions of fact. McKinney v. De Bord, 507 F.2d 501,
10 504 (9th Cir. 1974).

11 II. Summary Judgment

12 Summary judgment is properly granted when no genuine and
13 disputed issues of material fact remain, and when, viewing the
14 evidence most favorably to the non-moving party, the movant is
15 clearly entitled to prevail as a matter of law. Fed. R. Civ. P.
16 56; Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986);
17 Eisenberg v. Ins. Co. of N. Am., 815 F.2d 1285, 1288-89 (9th Cir.
18 1987).

19 The moving party bears the burden of showing that there is no
20 material factual dispute. Therefore, the court must regard as true
21 the opposing party's evidence, if it is supported by affidavits or
22 other evidentiary material. Celotex, 477 U.S. at 324; Eisenberg,
23 815 F.2d at 1289. The court must draw all reasonable inferences in
24 favor of the party against whom summary judgment is sought.
25 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
26 587 (1986); Intel Corp. v. Hartford Accident & Indem. Co., 952 F.2d
27 1551, 1558 (9th Cir. 1991).

1 Material facts which would preclude entry of summary judgment
2 are those which, under applicable substantive law, may affect the
3 outcome of the case. The substantive law will identify which facts
4 are material. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
5 (1986).

6 III. IDEA

7 The IDEA provides federal funding to states for the education
8 of children with disabilities. 20 U.S.C. § 1411. Participating
9 states must ensure that all eligible students receive a FAPE, which
10 consists of "educational instruction specially designed to meet the
11 unique needs of the handicapped child, supported by such services
12 as are necessary to permit the child 'to benefit' from the
13 instruction." Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v.
14 Rowley, 458 U.S. 176, 188-89 (1982); 20 U.S.C. § 1401(9).

15 The IDEA requires a team comprised of the student's parents,
16 qualified professionals and a representative of the local
17 educational agency to meet and develop an IEP, which summarizes the
18 special education and related services which will make up the
19 student's FAPE. 20 U.S.C. § 1414(d). The school district is not
20 obliged to provide the child with the best possible education, but
21 must provide a "basic floor of opportunity" and "confer some
22 educational benefit." Rowley, 458 U.S. at 200; Gregory K. v.
23 Longview Sch. Dist., 811 F.2d 1307, 1314 (9th Cir. 1987).

24 A state educational agency (SEA) must ensure that programs
25 administered by local educational agencies (LEA) meet the
26 requirements of the IDEA. 20 U.S.C. § 1412(a)(11)(A). A parent or
27 a public agency may file a due process complaint relating to the

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1 identification, evaluation or educational placement of a child with
2 a disability or the provision of a FAPE to the child. 20 U.S.C.
3 § 1415 (b)(6); 34 C.F.R. § 300.507(a). After receiving such a
4 complaint, the SEA must hold an impartial due process hearing, at
5 which a party has the rights, among other things, to be advised by
6 counsel, present evidence, and confront, cross-examine and compel
7 the attendance of witnesses. 20 U.S.C. § 1415 (f), (h); 34 C.F.R.
8 §§ 300.511, 300.512. Any party may appeal the decision of the due
9 process hearing officer. 20 U.S.C. § 1415 (g), (i)(A); 34 C.F.R.
10 § 300.514. Any party aggrieved by the appeal has a right to bring
11 a civil action in state or federal court. 20 U.S.C. § 1415
12 (i)(2)(A); 34 C.F.R. § 300.516.

13 Any SEA or LEA must establish procedures to allow disputes to
14 be resolved through a mediation process. 20 U.S.C. § 1415(e); 34
15 C.F.R. § 300.506(a). This is known as an informal complaint
16 resolution procedure (CRP). If the parties resolve a dispute
17 through the mediation process, they must execute a legally binding
18 agreement that sets forth that resolution. 34 C.F.R. § 300.507(6).
19 The written agreement is enforceable in state or federal court. 34
20 C.F.R. § 300.507(7).

21 DISCUSSION

22 I. State Defendants' Motion for Judgment on the Pleadings

23 In her 1AC, Ms. Pedraza alleges that, after State Defendants
24 issued their May 10, 2004 Compliance Reconsideration Report, they
25 violated the IDEA by (1) not investigating or monitoring the
26 District's continued failure to provide MP with IDEA services
27 required under the 2003 Settlement Agreement and (2) not enforcing
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1 the May 10, 2004 Compliance Reconsideration Report, which required
2 the District to hold an IEP meeting and take other corrective
3 actions to fulfill the District's obligations under the 2003
4 Settlement Agreement.

5 Citing the Court's September 30, 2009 Order, State Defendants
6 first argue that no claims remain against them. The September 30,
7 2009 Order concluded that "the case is now limited to plaintiff's
8 IDEA claims against the district defendants in 05-4977 and 07-4871
9 and plaintiff's breach of contract claim against the district
10 defendants in 05-4977." However, State Defendants overlook the
11 fact that, at the beginning of the Order, the Court noted, "The
12 state defendants make no motion on the 05-4977 complaint." The
13 Court's conclusion summarized the remaining claims against the
14 moving party, which was the District; it was not commenting about
15 the claims against State Defendants because they had not filed a
16 motion for the Court to address. State Defendants' first argument
17 is without merit.

18 State Defendants argue that there is no private right of
19 action under the IDEA to assert claims challenging the process or
20 decisions made by the parties through mediation under a state's
21 CRP. Ms. Pedraza responds that she can bring a such claim under 20
22 U.S.C. § 1415.

23 The parties do not cite any Ninth Circuit cases on this issue,
24 nor could the Court find any. State Defendants rely on Virginia
25 Office of Protection and Advocacy v. Virginia, Department of
26 Education, which concluded that § 1415 does not provide a private
27 right of action to challenge a state's CRP or its outcome. 262 F.

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1 Supp. 2d 648, 660 (E.D. Va. 2003).

2 The court noted that the IDEA provides two avenues for
3 pursuing a grievance: an aggrieved party can initiate a complaint
4 through the state's CRP under 20 U.S.C. § 1415(e), or obtain a due
5 process hearing under 20 U.S.C. § 1415(b)(6), (f). Id. at 659-60.
6 The court continued that, for a due process hearing, the IDEA
7 expressly delineates an aggrieved party's rights, such as the right
8 to counsel, to confront, cross-examine and compel the attendance of
9 witnesses, to a verbatim record of the hearing, to a written
10 opinion, to appeal, and to bring suit in federal court at the
11 conclusion of the appellate process. Id. (citing 20 U.S.C. § 1415
12 (g), (h), (i)(2)). However, the IDEA provides no such specific
13 rights for the CRP; it does not provide for the right to appeal or
14 for judicial review of a decision rendered in the CRP. Id. The
15 court concluded that, for it to decide "that § 1415, even in its
16 silence, intended to create a private right of action for parties
17 to challenge an otherwise informal complaint resolution process"
18 would defy the "clear statement rule" of Pennhurst State School &
19 Hospital v. Halderman, 451 U.S. 1, 17 (1981), and would second-
20 guess the drafters' intentions. Id. at 559. In so holding, the
21 Virginia Office of Protection court distinguished Beth v. Carroll,
22 87 F.3d 80, 86, 88 (3rd Cir. 1996), which concluded that § 1415
23 created a private right of action for plaintiffs alleging that the
24 state had failed to establish a complaint resolution procedure as
25 required by federal regulations implementing the IDEA. Id. at 559
26 n.4.

27 This Court agrees with the well-reasoned opinion in Virginia
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1 Office of Protection. Beth is distinguishable because it addressed
2 a state-wide policy of failing to implement the CRP process itself.

3 Ms. Pedraza argues that her claim does not address the CRP,
4 but rather the CDE's failure to investigate the District's non-
5 compliance with the CDE's May 2004 Compliance Reconsideration
6 Report, and to enforce compliance. Ms. Pedraza contends that,
7 under the IDEA, the CDE has "a broad scope of power and authority
8 to use at its discretion when faced with one of its local education
9 agency's failure to follow its orders," such as withholding the
10 District's funding.

11 State Defendants respond, citing Mrs. W. v. Tirozzi, 706 F.
12 Supp. 164, 168-69 (D.Conn. 1989), that a failure-to-monitor claim
13 is cognizable only when the plaintiff alleges that the state agency
14 had a pattern and practice of flagrantly neglecting its general
15 monitoring and supervisory duties. In Mrs. W., the court noted
16 that, in order for the plaintiffs to assert a claim that the state
17 agency failed to enforce a local agency's compliance with the IDEA,
18 they must allege more than dissatisfaction with the outcome of the
19 CRP; they must show that inadequacies in the procedures or
20 application of the CRP constitute a pattern and practice by the
21 state agency of failing to meet its responsibility to assure that
22 local boards were in compliance with federal law. Id. at 169.

23 The 1AC generally alleges that State Defendants "failed to
24 adopt procedures and practices or take necessary measures to ensure
25 that AUSD fulfills its obligations under settlement agreements
26 arising under the IDEA to resolve claims of denials of a FAPE,
27 including the Parents' settlement agreement." 1AC at ¶ 41.

1 However, this conclusory statement is unsupported by any factual
2 allegations; the gravamen of Ms. Pedraza's claim against State
3 Defendants is that they specifically did not investigate the
4 Pedrazas' claim that the District had not complied with the 2003
5 Settlement Agreement. However, the allegations themselves show the
6 opposite to be true. The 1AC alleges that the CDE several times
7 reviewed Ms. Pedraza's claim that the District was not complying
8 with the 2003 Settlement Agreement, and issued reports based on its
9 findings. In the first report, the CDE found that the District had
10 fulfilled its obligations under the 2003 Settlement Agreement. In
11 the second report, the May 2004 Compliance Reconsideration Report,
12 the CDE found that the District was out of compliance with several
13 provisions, ordered the District to take corrective actions, and
14 required the District to send evidence of its corrective actions to
15 the CDE. Finally, in the February 8, 2005 letter, the CDE found
16 that the District had completed all the corrective actions it had
17 been directed to take. These allegations indicate that State
18 Defendants investigated Ms. Pedraza's complaints regarding the 2003
19 Settlement Agreement and issued findings and reports. Ms. Pedraza
20 may disagree with the CDE's finding that the District took all
21 corrective actions, but, based on the allegations in the 1AC, she
22 cannot claim that State Defendants did not engage in the
23 investigative process or enforce the corrective actions it ordered.
24 Ms. Pedraza's argument that the CDE's closing of her case left her
25 without an avenue to litigate the District's breach of the 2003
26 Settlement Agreement is without merit; in this complaint Ms.
27 Pedraza's sues the District for breach of the 2003 Settlement
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1 Agreement and failure to provide a FAPE to MP for the 2003-04 SY.

2 State Defendants' review of the implementation of the 2003
3 Settlement Agreement, which the Pedrazas and the District entered
4 into in the context of the CRP, amounts to a part of the CRP. The
5 2003 Settlement Agreement was not reached in a due process hearing.
6 Thus, section 1415 does not provide a private right of action for
7 Ms. Pedraza's dissatisfaction with the CRP. Even if the CDE review
8 were not a part of the CRP, Ms. Pedraza does not provide authority
9 that she has a private right of action to challenge the CDE's
10 decision in federal court under the IDEA.

11 Therefore, the Court concludes that, based on the face of the
12 pleadings, State Defendants are entitled to judgment as a matter of
13 law and their motion for judgment on the pleadings is granted.
14 Furthermore, as discussed below, Ms. Pedraza fails to proffer
15 evidence that the District did not comply with the 2003 Settlement
16 Agreement; therefore, even if State Defendants were not entitled to
17 judgment on the pleadings on the claim that they did not enforce
18 the 2003 Settlement Agreement, Ms. Pedraza's claim that they did
19 not enforce it would be futile.

20 II. District's Motion for Summary Judgment

21 A. Appeal of OAH Ruling

22 1. Standard of Review

23 As mentioned above, under the IDEA, a district court is
24 empowered to review a state educational agency's decisions in due
25 process hearings. 20 U.S.C. § 1415(i)(2). Federal courts
26 reviewing state administrative proceedings "are to 'receive the
27 records of the administrative proceedings;' 'hear additional
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1 evidence at the request of a party;' and 'grant such relief as the
2 court determines is appropriate' based on a preponderance of the
3 evidence." Amanda J. ex rel. Annette J. v. Clark County Sch.
4 Dist., 267 F.3d 877, 887-88 (9th Cir. 2001); 20 U.S.C.
5 § 1415(i)(2)(C). Thus, judicial review in IDEA cases is different
6 from judicial review of other agency actions, in which courts
7 generally are confined to the administrative record and must accord
8 the agency great deference. Id. (citing Ojai Unified Sch. Dist. v.
9 Jackson, 4 F.3d 1467, 1471 (9th Cir. 1993)). However, complete de
10 novo review is inappropriate. Id. Courts cannot substitute their
11 own notions of sound educational policy for those of the school
12 authorities. Id. Because it was Congress' intent that "the states
13 have the primary responsibility of formulating each individual
14 child's education," a court must give due weight to the state
15 hearing officer's decision. Id. (citing Rowley, 458 U.S. at
16 206-08). The amount of deference owed to the hearing officer is a
17 matter for the court's discretion, with greater deference due if
18 the hearing officer's findings are thorough and complete. Adams v.
19 State of Oregon, 195 F.3d 1141, 1145 (9th Cir. 1999).

20 The party challenging an administrative decision in district
21 court bears the burden of proof that the decision should be
22 reversed. Clyde K. v. Puyallup Sch. Dist., No. 3, 35 F.3d 1396,
23 1398 (9th Cir. 1994) superceded by statute on other grounds; Hood
24 v. Encinitas Union Sch. Dist., 486 F.3d 1099, 1103 (9th Cir. 2007).

25 2. Analysis

26 In its motion based on the administrative record, the District
27 presents detailed arguments, including citations to the

1 administrative record, establishing that the hearing officer's
2 decision was supported by substantial evidence, was well-reasoned
3 and, thus, should be affirmed. In her opposition to the District's
4 motion for summary judgment, Ms. Pedraza asserts that the motion
5 should be denied "based on the fact that: (1) Plaintiff did not
6 receive a 'fair trial in a fair tribunal;' (2) the District was a
7 'party in interest' to the pending and present lawsuit; and (3) to
8 grant the District's motion would deny Plaintiff his right to
9 review as an aggrieved party." Opp. at 10. Ms. Pedraza's primary
10 argument is that the District's removal of case number C 07-5989³
11 obstructed her right to the procedural guarantees of 20 U.S.C.
12 § 1415(i)(2)(A), which provides that an aggrieved party may bring a
13 civil action in state court or federal district court. Opp. at 10,
14 12.

15 Ms. Pedraza's arguments are non-responsive to the District's
16 motion, and are without merit. Case number C-07-5989 was an appeal
17 of the due process hearing decision issued by OAH. The case was
18 correctly removed pursuant to 28 U.S.C. § 1441(b), which provides
19 that any action over which district courts have original
20 jurisdiction based on a claim or right arising under the
21 Constitution, treaties or laws of the United States may be removed
22 from state court. As indicated in 20 U.S.C. § 1415(i)(2)(A), a
23 district court, as well as a state court, has jurisdiction to hear
24 appeals of state agencies' decisions after hearings under the IDEA.

25
26 ³Ms. Pedraza does not specify which case the District removed
27 from state court. However, only case number C-07-5989 was removed.
28 It was subsequently dismissed as untimely.

1 Because this Court has original jurisdiction over Ms. Pedraza's
2 appeal of the OAH decision, removal was proper. Furthermore, even
3 though case number C-07-5989 was subsequently dismissed, it was
4 duplicative of case number C-07-4781, which has been consolidated
5 with this case and which is now addressed in the District's motion
6 for summary judgment. Therefore, Ms. Pedraza had the opportunity
7 to present her arguments that the OAH decision was incorrect, but
8 has failed to do so.

9 Ms. Pedraza explains that her argument about the District
10 being a "party in interest" means that the State had an interest in
11 the OAH hearing decision such that there was a conflict of
12 interest, and the State should have recused itself and removed her
13 complaint to federal court. This argument is without merit because
14 the OAH correctly heard Plaintiff's complaint in accordance with
15 statutory and regulatory provisions.

16 As the party challenging the decision, Ms. Pedraza bears the
17 burden of proving that it should be reversed. Because the hearing
18 officer's decision was thorough and complete, it is deserving of
19 considerable deference. However, Ms. Pedraza does not submit any
20 argument explaining why the hearing officer's decision was
21 incorrect, nor does she make any citations to the administrative
22 record or submit any additional evidence. Therefore, Ms. Pedraza
23 completely fails to carry her burden of proof that the hearing
24 officer's decision was incorrect. The District's motion for
25 summary judgment on this claim is granted.

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1 B. Violation of IDEA for 2003-04 SY and Breach of 2003
2 Settlement Agreement

3 Ms. Pedraza claims that the District is liable for breach of
4 contract and violating the IDEA because it failed to provide MP
5 with the services required under the 2003 Settlement Agreement.
6 The District argues that it attempted to provide all the services
7 to which the parties agreed, but that the Pedrazas refused to
8 participate in the process and to provide the necessary information
9 so that the services could be provided.

10 Under California contract law, a party to a contract has a
11 duty to do everything incumbent upon him or her to accomplish the
12 purpose of the contract, and a duty not to do anything which
13 interferes with the right of the other party to receive the
14 benefits of the contract. Corson v. Brown Motel Investments, Inc.,
15 87 Cal. App. 3d 422, 427 (1978); Ladd v. Warner Bros.
16 Entertainment, Inc., 184 Cal. App. 4th 1298, 1306 (2010).
17 Furthermore, hindrance of the other party's performance operates to
18 excuse that party's nonperformance. Erich v. Granoff, 109 Cal.
19 App. 3d 920, 930 (1980). In regard to the IDEA claim, a local
20 school district cannot be held liable for failing to provide
21 services to a student when the failure is caused by the parents'
22 lack of cooperation. Glendale Unified Sch. Dist. v. Almasi, 122 F.
23 Supp. 2d 1093, 1110 (C.D. Cal. 2000) (parent exceeded "aggressive
24 advocate" standard by refusing to communicate with school district
25 and withholding student's records); B.G. v. Cranford Bd. of Educ.,
26 702 F. Supp. 1158, 1166 (D.N.J. 1988) (denying reimbursement for
27 private services to parents who disavowed participatory process

1 with school authorities).

2 The District cites many pages of the administrative record to
3 establish that the Pedrazas failed to complete the necessary
4 paperwork.⁴

5 For instance, CARD began providing behavioral services to MP
6 for the SY 2003-04, but discontinued them "because Plaintiff was
7 not cooperating with them." AR at 2803. The District offered to
8 replace CARD with the Foundation for Autistic Children Education
9 and Support (FACES), but the Pedrazas did not complete the intake
10 process. AR 2803; 2159. The District then offered services
11 through Lovaas Institute for Early Intervention (LIFE), but the
12 Pedrazas said they preferred the Behavioral Intervention
13 Association (BIA). AR 2803; 2145; 2147. The Pedrazas signed the
14 consent form to release confidential information to the BIA, but
15 then revoked it. AR 1144-45; 2148-49; 2783-84. As a result, the
16 BIA refused to proceed with the intake process. AR 2148-49; 2166-
17 67; 2780; 2803-04. On June 7, 2004, the District again offered the
18 LIFE program. AR 2150-51; 2803. The Pedrazas initially accepted
19 the LIFE program and signed a consent form, but they did not
20 complete the intake process. AR 1166-67. The District concedes
21 that MP received no behavioral services in the 2003-04 SY, but
22 argues that this was because the Pedrazas did not cooperate in the
23 intake process for any provider. The District provides evidence
24 that the Pedrazas' actions also prevented it from providing

25
26 ⁴Although IDEA services for the 2003-04 SY were not before the
27 ALJ, he admitted evidence regarding this time period as background
28 information for the claims alleging that the District failed to
provide services in subsequent years.

1 consistent OT services to MP and paying for speech and language
2 services provided by CHO.

3 Ms. Pedraza fails to counter any of the District's evidence
4 that it was her and her husband's actions that caused its inability
5 to provide the services required by the 2003 Settlement Agreement.
6 However, Ms. Pedraza argues three ways in which the District
7 breached the 2003 Settlement Agreement. First, Ms. Pedraza argues
8 that the District agreed to provide in-home services through LIFE,
9 which required the District to pay LIFE, but that it then offered a
10 "workshop model," which required the Pedrazas to pay LIFE
11 directly.⁵ Ms. Pedraza states that she and her husband could not
12 afford to pay these fees and that they never agreed to such an
13 arrangement. However, Ms. Pedraza does not provide any citation to
14 the administrative record or other evidence to support this
15 argument. Therefore, she fails to raise a triable issue of
16 material fact that the District either breached the 2003 Settlement
17 Agreement or violated the IDEA because it offered to provide LIFE's
18 "workshop model" instead of in-home services.

19 Second, Ms. Pedraza argues that the District failed to enter
20 into master contracts and individual service agreements with
21 providers of MP's speech and language and behavior services. As
22 support, she cites Finding of Fact 4 of the CDE's May 2004
23 Compliance Reconsideration Report. Pl.'s Ex. B, CDE May 2004
24 Compliance Reconsideration Report, at 5, Finding of Fact 4. Ms.

25
26 ⁵The Court assumes this means the Pedrazas would initially pay
27 LIFE for the services provided and then get reimbursed by the
28 District, as the District had been doing for a variety of services
that had been pre-paid by the Pedrazas.

1 Pedraza also submits evidence that the District did not sign a
2 contract with CHO.

3 In Finding of Fact 4, the CDE found that the District did not
4 have a master contract or individual service agreement with CHO or
5 the autism center for MP when the special education services were
6 initiated for the 2003-04 SY. Id. However, in Finding of Fact 2,
7 the CDE found that the District continued to provide services from
8 both institutions pursuant to the 2003 Settlement Agreement until
9 the autism center terminated services to MP on November 3, 2003.
10 Id. Likewise, in Finding of Fact 5, the CDE found that, although
11 the District did not develop an individual service agreement with
12 CHO and the autism provider in a timely manner, MP received
13 services from both providers. Id. Furthermore, in Finding of Fact
14 6, the CDE found that the District incorporated the services into
15 the October 14, 2003 IEP as required by the 2003 Settlement
16 Agreement. Id.

17 Ms. Pedraza concludes that, based upon the Findings of Fact in
18 the CDE's May 2004 Compliance Reconsideration Report, the District
19 went "to great lengths to delay and deny Plaintiff the services
20 which they promised him in the settlement agreement." Opp. at 6.
21 However, the CDE's May 2004 Compliance Reconsideration Report does
22 not support Ms. Pedraza's conclusion. She overlooks the fact that,
23 even though the contracts with CHO and the autism center were not
24 in place, the CDE found that MP continued to get these services.

25 Ms. Pedraza's last argument is that the District failed to
26 reimburse her and her husband for services to MP for which they
27 paid, as required by the 2003 Settlement Agreement. In Finding of
28

1 Fact 6, the CDE found that the District provided insufficient
2 evidence "to show that reimbursement payments have been made to the
3 parents for pre-school and OT services in a timely manner." In
4 Corrective Action Number 5, the CDE required the District to
5 clarify payment procedures to CHO and to clarify reimbursement and
6 proof of payment procedures to the parents. In the CDE's February
7 8, 2005 Letter Regarding Compliance Investigation, submitted by Ms.
8 Pedraza herself, the CDE found that the District had taken all
9 required corrective actions. Absent specific evidence that the
10 District did not reimburse her as required under the 2003
11 Settlement Agreement, Ms. Pedraza has failed to raise a triable
12 issue of fact on this issue.

13 Therefore, Ms. Pedraza fails to raise a triable issue of
14 material fact disputing the District's evidence that it was the
15 Pedrazas' conduct that prevented it from providing the services
16 required in the 2003 Settlement Agreement. Ms. Pedraza also fails
17 to raise a triable issue of fact that the District otherwise
18 breached the 2003 Settlement Agreement or violated the IDEA. Thus,
19 the District's motion for summary judgment on Ms. Pedraza's claims
20 for breach of contract and violation of the IDEA for SY 2003-04 is
21 granted.

22 III. District's Motion for Summary Judgment on its Counter-Claims

23 A. Breach of Contract

24 In its counter-claim for breach of contract, the District
25 alleges that Counter-Defendants, Mr. and Ms. Pedraza, breached the
26 2003 Settlement Agreement by preventing the District from providing
27 the services outlined in the 2003 Settlement Agreement. The

1 District contends that the Pedrazas breached paragraphs 2.K(2) and
2 11 of the 2003 Settlement Agreement.

3 Paragraph 2.K(2) states that the District's provision of
4 services listed in paragraphs B through E are contingent upon the
5 parents providing "a full release to exchange information and
6 documentation between the District and MP's service providers."
7 Paragraph 11 provides, "Each party to this Agreement shall
8 cooperate fully in the execution of any and all other documents and
9 the completion of any additional actions that may be necessary or
10 appropriate to give full force and effect to the terms and intent
11 of this Agreement."

12 Citing testimony and evidence submitted in the hearing before
13 the ALJ, the District argues that its ability to perform its
14 obligations under the 2003 Settlement Agreement was contingent upon
15 the Pedrazas cooperating with service providers and that, by not
16 doing so, the Pedrazas did not act in good faith or deal fairly
17 with the District.

18 Ms. Pedraza, citing the findings of the May 2004 Compliance
19 Reconsideration Report, merely reargues that the District breached
20 the 2003 Settlement Agreement because it did not (1) contract with
21 service providers; (2) provide services to MP at no cost to the
22 Pedrazas; (3) ensure that MP received the promised services;
23 (4) redress its continued violation of the IDEA; and (5) implement
24 and follow procedures outlined by the CDE in its May 2004
25 Compliance Reconsideration Report. However, the findings in the
26 May 2004 Compliance Reconsideration Report do not avail Ms.
27 Pedraza.

28

1 First, while the CDE at one point found the District out of
2 compliance with the 2003 Settlement Agreement, it later found that
3 the District had complied. Second, for the purpose of the
4 District's breach of contract claim, the CDE's reports do not
5 amount to testimonial or documentary evidence to controvert the
6 testimony and documents cited by the District. Thus, Ms. Pedraza
7 does not create a disputed issue of material fact. Ms. Pedraza
8 fails to address the District's evidence that she and her husband
9 breached the 2003 Settlement Agreement by not cooperating with the
10 service providers obtained by the District.

11 Therefore, the District, through citations to testimony and
12 documents in the AR, has established its prima facie case that the
13 Pedrazas failed to cooperate with service providers and, thus,
14 breached the 2003 Settlement Agreement. Ms. Pedraza fails to raise
15 a triable issue of material fact that the District breached the
16 2003 Settlement Agreement and that the Pedrazas did not breach it.
17 Therefore, the District's motion for summary judgment on its
18 counter-claim against the Pedrazas for breach of contract is
19 granted.

20 B. Express Indemnity

21 Paragraph 6 of the 2003 Settlement Agreement provides that the
22 Pedrazas would

23 indemnify, defend and hold harmless the District . . .
24 from and against any and all claims . . . arising from
25 any breach or default in the performance of any
26 obligation on the Parents' part to be performed under the
27 terms of this Agreement, . . . and from any and all
28 costs, expenses and liabilities incurred in the defense
of any such claim or action or proceeding brought thereon
. . . .

1 The District notes that Ms. Pedraza has sued it for breach of
2 the 2003 Settlement Agreement and for violation of the IDEA by
3 failing to provide the services required therein. The District
4 argues it was prevented from performing its obligations due to the
5 Pedrazas' failure to cooperate with the requirements of the service
6 providers, as required by ¶¶ 2.K(2) and 11. The District concludes
7 that, because Ms. Pedraza's claims arise from the breach of the
8 Pedrazas' obligations, they fall under paragraph 6 of Agreement
9 and, thus, the Pedrazas have a duty to defend and indemnify it for
10 its attorneys' fees and costs associated with its defense of Ms.
11 Pedraza's claims.

12 Ms. Pedraza responds that, because the District breached the
13 2003 Settlement Agreement, it forfeits any right to indemnity. She
14 cites paragraph 13, which provides, "Should either party breach any
15 portion of this Agreement, the breaching party shall forfeit any
16 and all consideration promised or received under the terms of this
17 Agreement." However, as discussed above, the Pedrazas' failure to
18 perform ¶¶ 2.K(2) and 11 of the Agreement excused any failure on
19 the part of the District to provide required services. Therefore,
20 the District did not breach the 2003 Settlement Agreement and the
21 Pedrazas did breach it.

22 Ms. Pedraza also argues that the District has retaliated
23 against her for advocating for MP by removing case C-07-5989, which
24 denied her an impartial due process hearing. As discussed above,
25 this argument is without merit. She also argues that the
26 District's filing of the indemnity claim is an act of retaliation
27 "in an effort to obtain monetary damages." There is no evidence
28

1 that the District's filing of this counter-claim was retaliatory.
2 Lastly, Ms. Pedraza's argument that the judge who decided the
3 previous motions filed in this case was biased, and created an
4 obstruction of justice, is without merit.

5 Thus, Ms. Pedraza has failed to raise any triable issue of
6 material fact that she is not liable under the express indemnity
7 clause of the 2003 Settlement Agreement, and Mr. Pedraza did not
8 oppose the motion. Summary judgment of liability is granted to the
9 District on this claim.

10 CONCLUSION

11 For the foregoing reasons, the Court grants State Defendants'
12 motion for judgment on the pleadings (Docket No. 222) and the
13 District's motions for summary judgment on Ms. Pedraza's claims
14 (Docket No. 223) and for summary judgment of liability on its
15 counter-claims for breach of contract and express indemnity (Docket
16 No. 223). The District's damages remain to be determined. The
17 District did not move for summary judgment on its counter-claims
18 for: (1) enforcement of the 2007 mediated final agreement, under
19 the IDEA and related state law; (2) state law fraud based on the
20 2007 final agreement; and (3) recovery of attorneys' fees.
21 Therefore, these counter-claims are still pending in this action.
22 Within seven days from the date of this Order, the District shall
23 inform the Court how it proposes to proceed on its claims.

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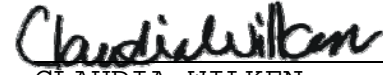
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1 Judgment will not be entered until these counter-claims are
2 resolved.

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4 IT IS SO ORDERED.

5 Dated: 9/29/2011



CLAUDIA WILKEN
United States District Judge

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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 PEDRAZA et al,

5 Plaintiff,

6 v.

7 ALAMEDA UNIFIED SCHOOL DISTRICT et al,

8 Defendant.

Case Number: CV05-04977 CW

CERTIFICATE OF SERVICE

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
10 Northern District of California.

11 That on September 29, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
14 in the Clerk's office.

15 Francisco Pedraza
16 22 Souza Court
17 Alameda, CA 94502

18 Linda Pedraza
19 22 Souza Court
20 Alameda, CA 94502

21 Dated: September 29, 2011

22 Richard W. Wieking, Clerk
23 By: Nikki Riley, Deputy Clerk
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25
26
27
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