BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:	
PARENT ON BEHALF OF STUDENT,	OAH Case No. 2016080577
v.	ORDER FOLLOWING PREHEARING CONFERENCE; ORDER GRANTING DISTRICT'S MOTION TO DISMISS; ORDER DENYING DISTRICT'S REQUEST FOR SANCTIONS
LOS ANGELES UNIFIED SCHOOL DISTRICT.	

On September 12, 2016, a telephonic prehearing conference was held before Administrative Law Judge Vernon Bogy, Office of Administrative Hearings. Mary Kellogg, Attorney at Law, appeared on behalf of Los Angeles Unified School District. Michelle Grandberry, Parent, appeared on behalf of Student. The PHC was recorded.

On August 30, 2016, District filed a motion to dismiss Student's due process complaint on the grounds that Student's claims are barred by a July 21, 2016 final settlement agreement[1], and therefore the Office of Administrative Hearings has no jurisdiction to hear this matter. District's motion is supported by a copy of the settlement agreement. On August 31, 2016, Student's parent filed an opposition to the motion.

Based upon the District's moving papers and Student's opposition, and oral argument of the parties at the PHC, the ALJ issues the following order:

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); see also Ed. Code, § 56501, subd. (a).) 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 [hereafter *Wyner*].)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the United States District Court for the Northern District of

[1] The settlement agreement, which was signed by Student's Parent and District's Representative on July 21, 2016, fully and finally resolves all claims and issues between the parties in OAH Case No. 2016060409.

California held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure.

Settlement agreements are interpreted using the same rules that apply to interpretation of contracts. (*Vaillette v. Fireman's Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 686, citing *Adams v. Johns-Manville Corp.* (9th Cir. 1989) 876 F.2d 702, 704.) "Ordinarily, the words of the document are to be given their plain meaning and understood in their common sense; the parties' expressed objective intent, not their unexpressed subjective intent, governs." (*Id.* at p. 686.) If a contract is ambiguous, i.e., susceptible to more than one interpretation, then extrinsic evidence may be used to interpret it. (*Pacific Gas & Electric Co. v. G. W. Thomas Drayage & Rigging Co.* (1968) 69 Cal.2d 33, 37-40.) Even if a contract appears to be unambiguous on its face, a party may offer relevant extrinsic evidence to demonstrate that the contract contains a latent ambiguity; however, to demonstrate an ambiguity, the contract must be "reasonably susceptible" to the interpretation offered by the party introducing extrinsic evidence. (*Dore v. Arnold Worldwide, Inc.* (2006) 39 Cal.4th 384, 391, 393.)

Government Code section 11455.30 provides that an ALJ may order a party, the party's attorney or representative (or both), to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. Whether an action is frivolous is governed by an objective standard: Whether any reasonable attorney would agree it is totally and completely without merit. There must also be a showing of an improper purpose; i.e., subjective bad faith on the part of the attorney or party to be sanctioned. An improper purpose may be inferred from the circumstances. (*West Coast Development v. Reed* (1992) 2 Cal.App.4th 693, 702.)

DISCUSSION

Student alleges in her complaint that District denied Student a free and appropriate public education by failing to provide Student with the special education related service of transportation to his school.

The settlement agreement signed by the parties with respect to OAH Case No. 2016060409 specifically provides, in Paragraph 3, that the settlement agreement "constitutes a full and final resolution of all claims and issues arising from or related to Student's educational program through the date of full execution of this Agreement, including, but not limited to, all of the claims and issues raised in, or related to, OAH Case No. 2016060409."

The settlement agreement further provides, in Paragraph 5 of the Mutual Compromise section, "[Parent] agrees to transport Student to and from 156th Street Elementary through the duration of Student's attendance at 156th Street Elementary. In the event that [Parent] can no longer provide transportation services to Student, [Parent] will notify administrative staff at Student's school of attendance in writing, and an IEP team meeting will be convened within 30 days to determine an alternative placement. [Parent] agrees to continue to transport Student until this change in placement occurs. Parent consents to this change."

Here, although Student's complaint alleges a denial of FAPE on the stated basis that District has failed to provide the special education related service of transportation, the complaint clearly seeks to enforce the terms of the settlement agreement relating to transportation. Paragraph 3 of the settlement agreement is unambiguous that the parties agreed that the settlement agreement fully and finally resolved all issues between the parties up to and through the date of the settlement agreement (July 21, 2016), including the issue of transportation.

As discussed above, OAH has no jurisdiction over straight contract issues such as reformation or rescission. Here Student's complaint does not raise claims "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." Accordingly, District's motion must be granted.

There is no evidence that Parent's claim was meritless or frivolous or made solely to cause unnecessary delay. It is reasonable that Parent, who was and remains unrepresented by counsel, had a sincere good faith belief that she did not waive all Student's special education claims by signing the settlement agreement. In addition to not being indicative of evil motive or intent, Parent's conduct does not rise to the level of subjective bad faith warranting sanctions.

ORDER

District's Motion to Dismiss is granted. The matter is dismissed. District's Request for Sanctions is denied.

DATE: September 12, 2016

DocuSigned by:
Vernon Bogy
CA1B14BFC99447E...

VERNON BOGY
Administrative Law Judge
Office of Administrative Hearings