BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

v.

LAMMERSVILLE UNIFIED SCHOOL DISTRICT.

OAH CASE NUMBER 2023060953

ORDER DENYING MOTION TO DISMISS IN PART BASED UPON SETTLEMENT AGREEMENT

AUGUST 24, 2023

On June 23, 2023, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH, naming Lammersville Unified School District. On August 16, 2023, Lammersville filed a motion to dismiss Student's complaint contending OAH lacked jurisdiction to hear this matter. On August 17, 2023, Student filed opposition to Lammersville's motion to dismiss and requested sanctions.

Student raised four claims against Lammersville in his complaint. Specifically, Student maintained that Lammersville denied Student a free appropriate public education, called FAPE, during the 2021-2022 school year by:

1. failing to conduct a timely behavior assessment and/or provide appropriate behavior interventions;
2. obstructing Parent's private assessors from completing all necessary observations and interviews;
3. delaying IEP team meetings; and
4. rejecting Parent's request for reimbursement for private assessment.

Lammersville argues OAH does not have jurisdiction to adjudicate these issues because the parties' settlement agreement did not specify it provided a FAPE to Student. Thus, Student's complaint should be dismissed in its entirety. Lammersville attached a copy of the settlement agreement is to the motion to dismiss.

Student contends that the future limited waiver agreed upon by the parties in the prior settlement agreement did not include the issues raised in this complaint. Thus, Student is free to file against Lammersville regarding these issues, despite the prior 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. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

This limited jurisdiction does not include claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) In the *Wyner* case, the parties reached a settlement agreement in which the district agreed to provide certain services during the course of a due process hearing. The hearing officer ordered the parties to

abide by the terms of the agreement. Two years later, the student filed another due process hearing alleging the school district did not comply with the settlement agreement in the first case. A hearing officer determined that the issues alleging the failure to comply with the settlement agreement in the first case were beyond its jurisdiction. This ruling was upheld on appeal. The decision in *Wyner* held that "the proper avenue to enforce Special Education Hearing Office 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 Special Education Hearing Office order in a prior due process hearing." (*Wyner, supra*, 223 F.3d at p. 1030.)

More recently, in *Pedraza v. Alameda Unified School Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603), the District Court held that OAH has jurisdiction to adjudicate claims that allege a student was denied a FAPE because of the violation of a mediated settlement agreement where the parties acknowledged in the agreement that the services the school district agreed to constitute a FAPE. However, 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. Thus, OAH has the authority to interpret a settlement agreement to determine if the parties to the settlement agreement explicitly agreed that its terms constitute FAPE. And if the parties did explicitly state that in the agreement, OAH would have jurisdiction to hear claims related to a failure to implement a settlement agreement as to the settlement terms that were designated as FAPE only.

When a party files a due process hearing request based on claims that were waived as part of a settlement agreement or outside OAH's jurisdiction, OAH will

sometimes dismiss the case. OAH has the authority to interpret a settlement agreement to determine preliminary jurisdictional issues and to enable it to dismiss issues, the complaint, or parties, if it lacks jurisdiction.

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.)

On January 28, 2021, Lammersville filed a request for due process hearing, designated as OAH case number 2021010828. Lammersville alleged that its November 13, 2020 individualized education program, called IEP, including placement at a county run autism special day class, called SDC, offered Student a FAPE.

In April 2021, the parties entered into a settlement agreement to resolve the claims raised in OAH case number 2021010828. The parties' do not dispute that they entered into a final settlement agreement on April 30, 2021, to resolve OAH case number 2021010828.

The April 30, 2021 settlement agreement states, in relevant part:

"This Agreement consists of a compromise of the District's claims and limited future claims of Student and Parents as set forth in this Agreement."

"The Parties, in consideration of the promises made herein, agree as follows:

1. The District agrees to diagnostically place Student in a District-operated mild-moderate special day class ("SDC") upon the Effective Date of this Agreement."
2. "Parents understand that the District does not agree that the program provided for in Paragraph 1 constitutes a FAPE in the least restrictive environment for Student and, for that reason, Parents agree to waive any FAPE claims against the District regarding the appropriateness of the diagnostic mild-moderate SOC placement, but not related to any other aspect of the implementation of Student's IEP, from the Effective Date of this Agreement through the IEP meeting to be held in accordance with Paragraph 5 to this Agreement. Specifically, Parents understand that the District does not believe that the mild-moderate SDC placement is appropriate for Student to make reasonable progress in light of his unique needs and, as such, waive claims related to a lack of progress. This waiver does not apply to claims Student failed to make adequate progress due to a failure of the District to implement Student's IEP in accordance with this Agreement in good faith."
3. "The Parties recognize and agree that Parents retain their rights, under the limited waivers set forth above, to claim a denial of FAPE as a result of an alleged failure by the District to implement Student's IEP in the diagnostic placement. As such, the Parties agree that Parents may bring a claim of

> breach of the provisions of this Agreement related to the implementation of Student's IEP before the California Office of Administrative Hearings. Nothing in this paragraph is intended to alter or expand the limited waivers as specifically set forth above."

Here, the limited future waiver language in the April 2021 settlement agreement specifically requires Parents to waive only FAPE claims against Lammersville regarding:

- the appropriateness of Student's placement; and
- Student's lack of progress.

Further, it excludes any lack of progress claims due to a failure of Lammersville to implement Student's IEP. Thus, the plain language of the April 2021 settlement agreement is limited to the areas of placement and lack of progress.

A special education student's placement is that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to the student. (Cal. Code Regs., tit. 5, § 3042(a).) Here, Student did not challenge Student's placement or his lack of progress in this complaint. Instead, Student alleged violations related to failing to assess, failing to implement appropriate behavior interventions, obstructing assessors' ability to observe and interview, assessment reimbursement, and delaying IEPs.

In contract interpretation, the initial inquiry is whether the contract language is broad enough to cover the activity at issue. If it is not, then the contract does not apply and the analysis ends. Here, the contract language in the April 2021 settlement agreement does not apply to Student's issues in this complaint and are outside of the agreement. Thus, Lammersville's motion to dismiss fails.

Furthermore, the April 2021 settlement agreement failed to include any release or waiver language barring all claims concerning Student after execution of the April 2021 settlement agreement. It only waived Parents ability to allege FAPE claims against Lammersville regarding the appropriateness of the diagnostic placement, and lack of progress, excluding implementation. Without such waiver language, Student was free, under the IDEA, to file a complaint regarding the issues in Student's complaint.

Accordingly, Lammersville's motion to dismiss is denied. Student's request for sanctions is denied.

IT IS SO ORDERED.

Cynthia Fritz

Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings