

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENT ON BEHALF OF STUDENT,

v.

IRVINE UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2018120054

ORDER DENYING MOTION TO DISMISS

On December 3, 2018, Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings, naming Irvine Unified School District.

On December 26, 2018, Irvine filed a motion to dismiss. On December 31, 2018, Student filed a response to the motion to dismiss.

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); 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.)

However, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court 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.)

DISCUSSION

Student filed a complaint naming Irvine in November 2016, OAH Case Number 2016110472. Administrative Law Judge Robert G. Martin OAH conducted a hearing and issued a Decision on July 17, 2017. The parties executed a settlement agreement in December 2017, in lieu of pursuing appeals of ALJ Martin’s Decision. The pertinent terms of the settlement agreement required Irvine to reimburse Parents for the costs of a residential treatment program for Student through the end of the regular 2017-2018 school year. The parties agreed that at the beginning of the 2017-2018 extended school year, Student would be placed in Irvine’s Adult Transition Program, and an IEP from 2017 would be implemented until an IEP team meeting was held in 2019, following triennial assessments of Student. Parents waived all claims until February 7, 2019.

In her current complaint, Student claims Irvine has not implemented the 2017 IEP appropriately, and as a result, Student has been denied a FAPE during her participation in the Transition Program. In its motion to dismiss, Irvine asks that OAH dismiss the

complaint because, it asserts, OAH does not have jurisdiction to enforce the settlement agreement. Irvine also references several places in the settlement agreement in which Parents allegedly waived the right to assert Student was denied a FAPE, due to failure of Irvine to implement the settlement agreement. In addition, Irvine asks OAH to dismiss the complaint based on the waiver of claims until February 7, 2019, and also makes reference to paragraph 16 of the agreement in which the parties agree that "any action to enforce the Agreement shall be brought in either a state or federal court of competent jurisdiction and no other forum." Irvine refers to an OAH order in OAH Case Number 2018110789 in which ALJ Clifford H. Woosley dismissed the case based on waiver language in a settlement agreement which Irvine claims was similar to the waiver language in the settlement agreement in the instant matter. Finally, Irvine points out that Student has proposed resolutions in her complaint which, if ordered as relief by an ALJ following a due process hearing, would "reform" the settlement agreement and extend Irvine's obligations beyond the obligations imposed upon it by the settlement agreement.

In her response to Irvine's motion to dismiss, Student points out a specific provision in the settlement agreement, paragraph 8(B). That portion of the settlement agreement states, "Expressly excluded from the Released Claims are the following: (1) Any claims relating to implementation (including IEP implementation) as specified in paragraph 6(B)(i) [which is the paragraph placing Student in the Adult Transition Program beginning with the start of the 2017-2018 school year] and enforcement of this Agreement." Although Irvine argues in its motion that Parents in at least three other places in the agreement waived the right to claim Student was denied a FAPE, paragraph 8(B) explicitly excludes failure to implement the 2017 IEP from waiving the right to file a complaint in this regard.

In regards to ALJ Woosley's Order in OAH Case Number 2018110789, there is a difference between that settlement agreement and the one in this case: there is no explicit carve-out from the release of claims portion of the agreement like paragraph 8(B)(1). In regards to Irvine's argument regarding the parties' election of state or federal courts as a forum to enforce the agreement, Student's complaint relates to the implementation of the IEP, not enforcement of the settlement agreement. Finally, Irvine's argument that Student's proposed resolutions, if ordered by the ALJ conducting the due process hearing, would "reform" the settlement agreement is not a basis upon which to dismiss an action. ALJ's have broad discretion to craft appropriate remedies should a denial of FAPE be found and Irvine is not precluded from arguing the appropriateness of any sought remedies when the case is tried. Irvine's motion to dismiss is denied.

ORDER

Irvine's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

DATE: January 4, 2019

REBECCA FREIE

Administrative Law Judge

Office of Administrative Hearings