

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

VALLEJO CITY UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013020481

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On February 12, 2013, Student filed a Request for Due Process Hearing (complaint), naming Vallejo City Unified School District (District) as the respondent. On February 22, 2013, District filed a Motion to Dismiss, alleging that Student and District entered into a settlement agreement on April 11, 2012 which bars claims raised in Student's due process complaint. On February 23, 2013, Student filed an opposition to the Motion to Dismiss.

APPLICABLE LAW

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

On April 11, 2012, Student and District entered into a settlement agreement (Agreement). The Agreement states, in part, that “In settlement of any and all educational claims to date and further Parents and Student agree that, for the period from the date of this Agreement to the IEP described in this Agreement, they will not raise any claims in due process or otherwise or claim for that period that the services agreed to in this Agreement are not FAPE, or for this period that any other services should have been provided, the parties agree as follows....”

This waiver has two material time periods. The first time period listed is through April 11, 2012 where any and all educational claims are waived. The second time period is from April 11, 2012 and the date of the IEP team meeting referenced in clause 2(e) of the Agreement where claims for services agreed to or claims that other services were required were barred.

In the present matter, the Student filed a due process complaint on February 12, 2013 with the following issues:

Issue One: Whether the District has, since April 12, 2012, appropriately assessed [Student] in the area of mental health.

Issue Two: Whether the District complied with procedural requirements of IDEA when it failed to review the February 2012 mental health assessment, conducted by Family Services, at an IEP team meeting for [Student].

Student’s Issue One alleges that the District has failed to complete a mental health assessment since April 12, 2012. This is outside the first waiver period listed in the Agreement. The second time period bars claims that the “services agreed to in this Agreement are not FAPE , or for this period that any other service should have been provided...” In this case, the Student has alleged that an assessment was not completed on Student and the plain language of the Agreement does not bar claims regarding assessment for the second time period. Therefore, Student’s Issue One is not barred by the terms of the Agreement and the Motion to Dismiss is denied as to Issue One.

Student’s Issue Two claims that the District failed to review the Family Services assessment completed in February 2012 at an IEP team meeting. This failure arose in February 2012, prior to the April 11, 2012 execution of the Agreement and during the first period of the waiver in the Agreement. The plain language of the waiver contemplates “any and all educational claims to date.” At the time the Agreement was signed, Student was aware that the District had failed to hold an IEP team meeting to discuss the Family Services assessment and did not separately make any agreement in the settlement to obligate the District further in regards to this assessment. Failure to hold an IEP team meeting to discuss an assessment certainly falls under the “any and all educational claims to date.” Therefore,

Student's Issue two is barred by the terms of the Agreement and the Motion to Dismiss is granted as to Issue Two.

ORDER

District's Motion to Dismiss is granted as to Issue Two.¹ The matter will proceed as scheduled as to Issue One.

IT IS SO ORDERED.

Dated: February 26, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings

¹ This order does not make any findings as to the admissibility of facts and evidence prior to April 11, 2012, which may be used at hearing in this matter to establish a material fact as to a claim or a defense.