

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

EL SEGUNDO UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014060438

ORDER GRANTING MOTION TO
DISMISS

On June 6, 2014, Student filed a Request for Mediation and Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming El Segundo Unified School District (District) as respondent. Student alleges District failed to comply with a June 2013 settlement agreement.

On June 16, 2014, District filed a Motion to Dismiss (Motion) on the grounds OAH does not have jurisdiction over the complaint which seeks to enforce and modify the settlement agreement. On June 20, 2014, Student filed opposition to the Motion.

For the reasons discussed below, the motion is granted.

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.) In *Wyner*, during the course of a due process hearing the parties reached a settlement agreement in which the school 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 claims alleging the school district’s failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH’s predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and 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, § 4650), 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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 U.S. Dist. Lexis 26541, the United States District Court for the Northern District of 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.)

DISCUSSION

District and Student entered into a settlement agreement on June 28, 2013. A redacted copy of the settlement agreement is attached to District's Motion. The settlement agreement states that effective June 13, 2013, Student was exited from special education and except as provided in the settlement agreement, District's obligation to provide special education, related services and compensatory education terminated on June 13, 2013. The agreement states that District will contract with the vendor to provide 200 hours of educational therapy and Student has until August 31, 2014 to use the services, but the agreement does not specify a deadline for District to contract with the vendor or when the services would begin. The agreement also states that District will contract with Village Glen West so that Student can take certain courses during the 2013-2014 school year. However, the agreement specifically states District is not agreeing that the placement and services set forth in the agreement constitute a FAPE. As part of the agreement, Student released District from all claims through the date of the agreement.

In his complaint, Student alleges District failed to comply with two terms of the June 2013 settlement agreement. First, District pulled Student from two of the agreed upon classes for six weeks. Second, District never contracted with the vendor for the educational therapy. Student seeks an order requiring District to contract with the vendor for the educational therapy to begin no later than June 30, 2014, an additional 30 hours of therapy as

compensatory education for pulling Student out of class, and an extension of four months to use the 230 hours of therapy.

District requests dismissal of Student's complaint because OAH does not have jurisdiction to implement and amend the terms of the agreement. District argues Student was exited from special education as of June 13, 2013 and, except as provided in the settlement agreement, Student waived all educational claims. District maintains Student agreed that the terms of the settlement did not constitute a free appropriate public education (FAPE).

District's motion is well-taken. OAH is not the proper forum to resolve questions regarding an alleged breach of or modification of a settlement agreement. Although Student claims District's failure to comply with the settlement agreement constitutes a denial of FAPE, the allegations in the complaint are insufficient to bring with matter within the *Pedraza* exception to the general rule. In his opposition, Student acknowledges that the complaint does not allege District denied Student a FAPE. While Student contends that the terms of agreement were intended to address the denial of FAPE and District's failure to comply with the settlement agreement is a denial of FAPE, this is not stated in the agreement or alleged in the complaint. In fact, the settlement agreement expressly states the parties do not agree that placement or services contained in the agreement constitute a FAPE. Moreover, the agreement states that it cannot be construed as an admission that any party acted wrongfully or that any party has rights against the other party.

Further, even if the allegations in the complaint could be construed as something more than a breach of contract or enforcement claim, the terms of the agreement seem to specifically preclude such claims. Not only did Student expressly release all claims against District as of the date of the settlement agreement, but Student also released District from any obligation to provide additional special education and services, including additional compensatory services beyond what is provided in the agreement. Specifically, in paragraphs 11 and 12, Student was exited from special education on June 13, 2013 and the parties agreed that District's obligation "to provide special education and related services or compensatory services of any kind under any or all applicable state or federal special education laws terminated on June 13, 2013, except as provided for within this agreement." While District has only provided a redacted copy of the agreement, the unredacted portions are unambiguous and Student's opposition does not address these arguments raised by the District.

As discussed above, issues involving a breach of the settlement agreement should be addressed by the California Department of Education's compliance complaint procedure or a court of competent jurisdiction. District's motion must be granted.

ORDER

District's Motion to Dismiss Student's complaint is granted. The matter is dismissed.

DATE: June 27, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings