

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030356

ORDER DENYING MOTION TO
DISMISS

On March 6, 2014, Parent on behalf of Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming Oakland Unified School District (District) as respondent. The complaint identifies Student's parent (Parent) as his conservator.

On June 17, 2014, Student filed a Notice of Unavailability for the period from June 21 through July 13, 2014. No opposition to the Notice of Unavailability has been received.

On June 19, 2014, District filed a Motion to Dismiss on the grounds OAH no longer has jurisdiction of this case because the parties have entered into a valid and binding settlement agreement where Student waived all claims through the end of the 2014 extended school year, the period of time covered in the complaint. District contends the terms of the settlement agreement were set forth in a statutory settlement offer letter from District. District argues that Student's counsel unconditionally accepted the offer in a letter from Student's counsel to District's counsel, but the parties have reached an impasse because of disagreement about the specific terms to be included in the formal written settlement agreement. The primary area of disagreement is the manner in which District will pay for compensatory education. District maintains it is not seeking enforcement of the settlement, but a determination that OAH no longer has jurisdiction over the parties' dispute.

On June 21, 2014, Student's counsel filed a response claiming she has until July 15, 2014 to file opposition because she is entitled to a total of three business days to respond to the motion to dismiss after excluding the days she is unavailable.

For the reasons set forth below, District's Motion to Dismiss is denied.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) 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 (*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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541 the United States District Court for the Northern District of California held that OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education as a result of a violation of a mediated settlement agreement, as opposed to “merely a breach” of the mediated settlement agreement that 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.)

Where the terms of an agreement are left for future determination and it is understood that the agreement is not to be deemed complete until they are settled or where it is understood that the agreement is incomplete until reduced to writing and signed by the parties, no contract results until this is done. (*Spinney v. Downing* (1895) 108 Cal. 666, 668.) Whether a writing constitutes a final agreement or merely an agreement to make an agreement depends primarily upon the intention of the parties. In the absence of ambiguity this must be determined by a construction of the instrument taken as a whole. (*Beck v. American Health Group International, Inc.* (1989) 211 Cal.App.3d 1555, 1562.) The objective intent as evidenced by the words of the instrument, not the parties’ subjective intent, governs...” (*Ibid.*) Where the writing at issue shows “no more than an intent to further reduce the informal writing to a more formal one” the failure to follow it with a more formal writing does not negate the existence of the prior contract. (*Smissaert v. Chiodo* (1958) 163 Cal.App.2d 827, 831.) However, where the writing shows it was not intended to be binding until a formal written contract is executed, there is no contract. (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 358.) The failure to reach a meeting of the minds on all material points prevents the formation of a contract even though the parties have orally agreed upon some of the terms, or have taken some action related to the contract. (*Ibid.*)

An attorney retained to represent a client in litigation is clothed with certain implied or ostensible authority by virtue of the relationship. This includes authority to bind the client by stipulation as to “procedural” tactical matters arising during the course of the action. (See *Blanton v. Womancare, Inc.* (1985) 38 Cal.3d 396, 404.) However, absent express authority from the client, the attorney has no power to impair the client's “substantive rights.” (*Ibid.*) Thus, an attorney has no implied authority merely on the basis of his or her employment and without the client's consent to settle or compromise a claim. (See *Linsk v. Linsk* (1969) 70 Cal.2d 272, 276, 278; *Blanton v. Womancare, Inc., supra*, 38 Cal.3d at 407; *In re Horton* (1991) 54 Cal.3d 82, 94; *Levy v. Superior Court* (1995) 10 Cal.4th 578, 583-584; *Stewart v. Preston Pipeline Inc.* (2005) 134 Cal.App.4th 1565, 1582.) Settlements signed by counsel alone are governed by agency principles and require proof that the client expressly authorized the attorney to settle on the client's behalf. (*Murphy v. Padilla* (1996) 42 Cal. App.4th 707, 717.)

While it is common practice in some communities for lawyers to file a “notice of unavailability” to block out dates when they will be unavailable, such notice has no legal effect on law and motion calendars and does not affect applicable time requirements. (*Carl v. Superior Court (Coast Comm. College Dist.)* (2007) 157 Cal.App.4th 73, 75.) However, it is considered harassment for attorneys to schedule matters knowing an opponent is unable to

respond and doing so can result in sanctions. (*Tenderloin Housing Clinic, Inc. v. Sparks* (1992) 8 Cal.App.4th 299, 305.)

DISCUSSION

On May 22, 2014, District sent Student a statutory settlement offer. A redacted copy of the offer is attached to District's Motion. In it, District agreed to settle all claims for a monetary settlement for compensatory education and attorney fees in exchange for Student's agreement "to enter into a final written settlement agreement that includes the terms of this offer" as well as other "standard" settlement agreement terms which were not specified. In addition, Student was required to agree to release all claims through the end of the 2014 extended school year. The offer was made in a letter signed only by District's counsel. There was no provision in the offer as to whom the monetary sums would be paid, when they would be paid or how they would be paid.

On May 28, 2014, Student's counsel replied by letter accepting the District's offer and agreeing to enter into a "final written settlement agreement that includes the terms of the offer and standard settlement agreement terms" in exchange for a waiver of all claims through the end of the 2014 extended school year. The acceptance letter was signed only by Student's counsel.

When District filed its motion to dismiss, it was aware that Student's counsel would be unavailable until July 13, 2014 because Student had served a Notice of Unavailability two days earlier. However, Student's assertion this notice resulted in some sort of litigation time-out, thereby extending Student's deadline to file opposition, is incorrect. Such notice has no legal effect on applicable time requirements. Student does not possess the power to unilaterally extend deadlines or enjoin OAH from issuing an order on the motion to dismiss in the absence of written opposition.

By its Motion to Dismiss, District is essentially seeking summary judgment that a binding settlement agreement exists and requesting that OAH enforce it by dismissing this matter. However, special education due process procedures do not permit motions for summary judgment and OAH has historically declined to exercise jurisdiction over enforcement claims. Even if OAH has jurisdiction to enforce settlement agreements or entertain summary judgment motions, the record is insufficient to establish that a binding settlement agreement between the parties in fact exists. The letters District relies upon as evidence of a binding settlement are only signed by counsel for the parties. Significantly, none of the documents have been signed by the parties themselves and District has proffered no evidence that Parent, who holds Student's educational rights, expressly authorized the attorney to settle on Student's behalf.

On their face, the letters at issue demonstrate that the parties intended no binding agreement would exist until such time as Parent signed a formal settlement agreement which had yet to be drafted or all of its terms specified. The letter from District's counsel expressly states that "Petitioner must agree to enter into a final written settlement agreement that

includes the terms of this offer as well as standard settlement term [*sic*].” After outlining the terms of the proposed agreement, District’s counsel requested that Student’s counsel respond in writing if the offer was acceptable so that District’s counsel could prepare a standard settlement agreement. Significantly, nothing in the letters indicates that the specified terms were intended to be binding or enforceable regardless of whether a written agreement is signed by the parties. Taken in its ordinary sense, the language of the letters evidence an intention of the parties that no binding contract would come into being until Parent signed a formal settlement agreement which embodied the terms of the letter and other unspecified settlement terms which had yet to be proposed or approved by Parent. While District maintains that all of the material terms of the agreement were set forth in the offer and that the disagreement concerns non-material terms, District’s arguments are not persuasive. District admits that one of the areas of disagreement concerns the method in which compensatory education is to be paid, i.e., whether District will fund an educational trust, whether Parent will be reimbursed for expenses, or whether the District will enter into independent service agreements with the third-party providers. A finding that this term is non-material cannot be made based upon the current record.

District relies on *Harris v. Rudin* (1999) 74 Cal.App.4th 299 (*Harris*), but that case does not support District’s position. In that case, the purported settlement agreement was a letter between the parties’ counsel signed by two of the respondents under a signature block noting “[a]ccepted and agreed” but it was not signed by petitioner. Even so, the court held that the document was not an enforceable settlement agreement under California Code of Civil Procedure section 664.6 because the litigants themselves on both sides of the dispute had not signed the purported settlement agreement. The court acknowledged that when the summary procedures of section 664.6 are not met, a party can seek to enforce a settlement agreement by prosecuting a breach of contract action. However, the court made no determination as to whether a binding settlement agreement existed for purposes of a breach of contract claim. The court merely found that the complaint alleged sufficient facts to state such a claim, in part because the complaint also alleged facts evidencing an oral agreement based upon several written and telephonic communications between the litigants themselves. “Whether the parties intended their communications to be a binding settlement agreement or an agreement to further negotiate after a formal draft was prepared is a factual question not properly the subject of a demurrer.” (*Id.* at p. 308.)

Here, neither District nor Parent signed the documents which District argues comprise the settlement agreement. Furthermore, unlike *Harris*, there is no allegation, much less evidence, that the parties themselves engaged in oral or written communications which culminated in an agreement which were then merely reduced to a writing. Instead, District relies on the language of the letters between counsel, which on their face demonstrate that no binding agreement was intended until Parent signed a formal settlement agreement which had yet to be drafted or all of its terms specified.

Student fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary judgment that the parties entered into a binding

settlement agreement. Accordingly, the motion to dismiss is denied. The prehearing conference and hearing dates currently set in this matter are confirmed.

IT IS SO ORDERED.

DATE: July 10, 2014

/s/

LAURIE GORSLINE
Administrative Law Judge
Office of Administrative Hearings