

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT AND NEW HORIZON
CHARTER ACADEMY.

OAH Case No. 2015030968

ORDER DENYING NEW HORIZON
CHARTER ACADEMY'S MOTION TO
DISMISS

On March 18, 2015, Student filed a Request for Mediation and Due Process Hearing, naming New Horizon Charter Academy and Los Angeles Unified School District.

On May 5, 2015, New Horizon Charter Academy filed a motion to dismiss¹ Student's complaint on the basis that it is barred by the terms of a settlement agreement and therefore the Office of Administrative Hearings has no jurisdiction to hear this case. Charter's motion is supported by a declaration under penalty of perjury, an authenticated copy of the settlement agreement and request for dismissal and several emails exchanged between the three parties.

No opposition has been received.

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 (*Wyner*).)

¹ In the alternative, Charter seeks a continuance to prepare for hearing. Parent has, informally, indicated a need to continue to find counsel. The issue of a continuance will be ruled on during the Prehearing Conference and all parties should be prepared to discuss available dates, should that motion be granted.

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, 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.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal., March 27, 2007, No. C 05-04977 VRW) 2007 WL 949603 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.)

DISCUSSION

Student's complaint alleges that District and Charter denied him a free appropriate public education during the 2014 – 2015 school year by failing to provide an appropriate placement with properly trained staff and a one on one aide.

In its motion to dismiss, Charter requests that Student's Complaint be dismissed because Student released all claims against Charter as of the date Charter and parent

executed the Agreement, on April 27, 2015. The Settlement Agreement is drafted for execution by all three parties and is, by its terms, is between Student through his parent, District and Charter.

The Agreement provides, at page 1, paragraph 2, that,

“[t]his Agreement constitutes a full and final resolution of all claims and issues arising from or related to Student’s educational program through the date of full execution of this Agreement, including, but not limited to, all of the claims and issues raised in, that could have been raised in, or related to, OAH Case No. 2015030968 and any and all claims under the IDEA, Section 504 of the Rehabilitation Act, and State special education laws.”

Page 1 provision 2 states, “Petitioner waives any and all claims against Respondents related to, or arising from, Student’s educational program through the date of full execution of this Agreement. . . .”

Page 3, paragraph 5 provides, “[t]his Agreement shall be effective and shall be implemented upon full execution by the Parties.”

Finally, page 2, paragraph 6 provides that there, “are no oral understandings, terms, or conditions, and neither [sic] party has relied upon any representation, express or implied, not contained in this Agreement. . . .”

Here, Charter provides extrinsic evidence in the form of emails and a declaration to support its position that all parties agreed to the terms of the written Agreement, but that District simply had not signed prior to parent’s withdrawal of her consent to the Agreement.

Under Civil Code section 1550, the essential elements of a contract include parties capable of contracting, consent, a lawful object and sufficient consideration. In this case, pursuant to the clear language in the Agreement, the Agreement is effective and can be implemented only “upon full execution by the Parties.” Parent withdrew her consent to the Agreement prior to full execution. As such, the Agreement is not enforceable.

“Contract formation is governed by objective manifestations, not subjective intent of any individual involved. The test is ‘what the outward manifestations of consent would lead a reasonable person to believe.’ ” (*Roth v. Malson* (1998) 67 Cal.App.4th 552, 557 [79 Cal.Rptr.2d 226], internal citations omitted.)

Because the plain language of the Agreement provides that it is not effective absent execution by all parties and parent withdrew consent prior to full execution, the Agreement does not resolve the claims relating to Student’s complaint.

ORDER

New Horizon Charter Academy's motion to dismiss is denied. The matter will proceed as scheduled.

IT IS SO ORDERED.

DATE: May 07, 2015

/s/

COLE DALTON
Administrative Law Judge
Office of Administrative Hearings