

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEW HAVEN UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2015070576

ORDER DENYING MOTION TO
DISMISS

On June 25, 2015, Student filed a request for mediation and due process hearing (complaint), naming New Haven Unified School District as the respondent.

On July 31, 2015, New Haven filed a motion to dismiss Student's issue that alleges a procedural violation by New Haven at an individualized education program meeting on May 12, 2015, because a general education teacher did not attend the IEP team meeting on that date.

On August 3, 2015, Student filed an opposition to the motion to dismiss this issue.

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 (IDEA). (*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.)

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.)

DISCUSSION

Student raises five claims against New Haven pertaining to the development of an IEP for the 2015-2016 school year at an IEP team meeting held on May 12, 2015. One of these claims is that New Haven committed a procedural violation because a general education teacher was not in attendance at that IEP team meeting.

New Haven, in its motion to dismiss this claim, alleges that the claim is barred by the provisions in a settlement agreement between the parties dated July 31, 2014. The agreement contains the following waiver language:

Parents hereby fully release and discharge the District from all claims, damages, liabilities, rights and complaints of whatever kind or nature arising from or related to Student's special education program through the end of the 2014-2015 extended school year.

This release and discharge precludes Student or Parents and anyone acting on behalf of Student or Parents, from hereafter initiating or maintaining any actions or proceedings, other than proceedings to enforce this Agreement, arising from or related to Student's educational program through the end of the 2014-2015 extended school year.

New Haven now claims that since the IEP team meeting at which the alleged procedural violation occurred during the 2014-2015 school year, Student cannot raise the procedural violation as an issue in the instant complaint.

Under the interpretation of the agreement proffered by New Haven, the settlement agreement of July 31, 2014, shields New Haven from having any action taken against it for any violation it might commit during the 2014-2015 school year, including the extended school year, regardless of whether the violation relates to Student's educational program for that school year, or a different school year. This interpretation is incorrect.

Student's opposition to the motion to dismiss and Student's complaint itself makes it clear that the complaint is related only to the IEP developed for the 2015-2016 school year. Looking at the intent of the parties, and the plain meaning of the waiver language from the agreement quoted above, the waiver applied to claims relating to "Student's *educational program through the end of the 2014-2015 extended school year.*" (Emphasis supplied.) Since Student's complaint pertains to the educational program for the 2015-2016 school year, and does not pertain to the educational program for the 2014-2015 school year, the settlement agreement does not preclude Student's claim of a procedural violation at the IEP team meeting held to develop that IEP. Accordingly, New Haven's motion to dismiss the issue concerning the absence of a general education teacher from the IEP team meeting of May 12, 2015, is denied.

IT IS SO ORDERED.

DATE: August 5, 2015

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings