

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:
PARENTS ON BEHALF OF STUDENT,

v.

OAK GROVE SCHOOL DISTRICT.
OAH CASE NUMBER 2021080447

ORDER DENYING MOTION TO DISMISS BASED UPON
SETTLEMENT AGREEMENT

OCTOBER 8, 2021

On August 16, 2021, Parents on behalf of Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Oak Grove School District. The Request for Due Process is referred to as a Complaint. The Office of Administrative Hearings is referred to as OAH.

In its October 4, 2021 PHC statement, Oak Grove listed as a preliminary issue for hearing, whether Student's claims prior to the 2021-2022 school year are barred by a prior settlement agreement. OAH ordered Oak Grove to file a motion to dismiss claims barred by settlement agreement no later than 12:00 PM on October 5, 2021. OAH ordered that Student's response be filed no later than 12:00 PM on October 7, 2021. On

October 5, 2021, Oak Grove filed a timely motion to dismiss. At the time of this Order, OAH had not received a response from Student.

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.)

This limited jurisdiction does not include claims alleging a school district’s failure to comply with a settlement agreement. (*Id.* at p. 1030.) In the *Wyner* case, the parties reached a settlement agreement in which the district agreed to provide certain services during the course of a due process hearing. The hearing officer ordered the parties to abide by the terms of the agreement. Two years later, the student filed another due process hearing alleging the district did not comply with the settlement agreement in the first case. A hearing officer determined that the issues alleging the failure to comply with the settlement agreement in the first case were beyond its jurisdiction. This ruling was upheld on appeal. The decision in *Wyner* held that “the proper avenue to enforce Special Education Hearing Office 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 Special Education Hearing Office order in a prior due process hearing.” (*Wyner, supra*, 223 F.3d at p. 1030.)

More recently, in *Pedraza v. Alameda Unified School Dist.* (N.D. Cal. 2007, No. C 05-04977 VRW) 2007 WL 949603), the District Court held that OAH has jurisdiction to adjudicate claims that allege a student was denied a free appropriate public education as a result of the violation of a mediated settlement agreement. However, a breach of a mediated 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.)

When a party files a due process hearing request based on claims that were waived as part of a settlement agreement, OAH will dismiss those claims. (See, e.g., *Student v. San Diego Unified School District* (2018) OAH case number 2018010046; *Student v. San Diego Unified School District* (2019) OAH case number 2019040157.)

DISCUSSION

Student's complaint contends Oak Grove denied Student a free appropriate public education, called FAPE, during the 2020-2021 school year, through the 2021-2022 school year. Oak Grove's Motion to Dismiss requests that Student's claims involving the 2020-2021 school year through August 11, 2021, be dismissed because Student released all claims against the Oak Grove as of the date of the fully executed settlement agreement, dated May 20, 2019, through August 11, 2021, Oak Grove's first day of instruction for the 2021-2022 school year. A copy of the settlement agreement is attached to Oak Grove's Motion to Dismiss.

Paragraph 2 of the Agreement section of the May 20, 2019 settlement agreement states the "term of this Agreement is from the date of execution through the Summer of 2020, preceding the 2021-22 regular school year, in accordance with District's school calendar." Paragraph 9 of the Agreement section states that "[p]arties agree to convene for an IEP team meeting in Spring of 2020 to develop Student's IEP for the 2020-21 school year." IEP refers to individualized education program.

Under the Waivers section of the settlement agreement, Paragraph 1 states:

Parents hereby waives and fully release District . . . from all rights, claims, and any claims arising under the Individuals with Disabilities Education Act . . . or any causes of action incidental thereto, that Parents may have against District . . . in regard to Student's education in and with District to date and through the term of this Agreement, except that the parties do not waive claims in regard to implementation and enforcement of this Agreement nor in regard to the District's assessments in Spring 2020 or FAPE offer in the IEP referenced above."

The IEP referred in Paragraph 9 of the Agreement section is the only IEP referenced in the agreement above the Waivers section. Paragraph 4 of the Waivers section further states that "this waiver does not abridge Parent's/Student's right to challenge the offer of FAPE made under this Agreement (i.e., the offer of FAPE made pursuant to Paragraph 9 above, that is effective following expiration of the term of this agreement."

The May 19, 2019 settlement agreement does not bar Student's claims during 2020-2021 school year and the Summer of 2021. The term of the May 19, 2019 settlement agreement in Paragraph 2 is inconsistent, as the "Summer of 2020" does not precede the 2021-2022 school year, but rather it precedes the 2020-2021 school year. However, reading the inconsistency of Paragraph 1 with Paragraph 9 of the Agreement section and Paragraphs 1 and 4 of the Waivers section, the agreement is clear that the waivers do not involve claims involving the offer of FAPE for the 2020-2021 school year or the Summer of 2021.

Paragraph 9 of the Agreement section refers to the development of an IEP and an offer of FAPE for the 2020-2021 school year. The Waivers section of the settlement agreement clearly states that Parent and Student did not waive their right to challenge the offer of FAPE made under this agreements, such as the offer of FAPE made pursuant to Paragraph 9. In addition, Paragraph 4 of the Waivers section also clarifies that the term of the settlement agreement does not extend to the 2020-2021 school year, as the offer of FAPE pursuant to Paragraph 9, which is the offer of FAPE for the 2020-2021 school year, takes effect "following expiration of the term of this Agreement". Therefore, the May 19, 2019 settlement agreement does not bar Student's claims for the 2020-2021 school year through the period prior to the start of 2021-2022 school year. Accordingly, Oak Grove's motion to dismiss is denied.

ORDER

Oak Grove's Motion to Dismiss is denied.

IT IS SO ORDERED.

Rommel P. Cruz

Rommel P. Cruz

Administrative Law Judge

Office of Administrative Hearings