

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

PLACENTIA-YORBA LINDA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2011051173

ORDER DENYING MOTION TO
DISMISS

On May 27, 2011, Student filed a Request for Due Process Hearing (complaint) naming District as the respondent. The complaint states three issues: the first alleges a failure in District's child-find responsibilities from and after September 2009, when District allegedly had reason to suspect that Student was a child with a disability; the second alleges a denial of a free appropriate public education (FAPE) by failing to provide an appropriate placement and program from and after September 2009; the third seeks reimbursement for a private placement. The background allegations include Student's history beginning in first grade, diagnosis with ADHD, medications, a section 504 plan generated in 2007, an attempted suicide and psychiatric hospitalization, and drug use. The factual background continues through a September 18, 2009, manifestation determination meeting related to section 504, followed by a stipulated expulsion. It continues with parental placement of Student in a residential treatment center on December 29, 2010. The complaint notes that the September 2009 manifestation determination document "is riddled with" information regarding Student's significant depression, ADHD, head injuries and attempted suicide, that allegedly put District on notice of student's disability.

On June 6, 2011, District filed a Motion to Dismiss, arguing that the stipulated expulsion entered into by the parties on September 22, 2009, contained a release that bars this complaint. Specifically, District argues that on or about September 22, 2009, District and Parents entered into an Agreement in Lieu of Expulsion that stated, in pertinent part, "The Parents agree not to pursue any civil litigation or file any actions or proceedings against the District, including any administrative complaints with any state or federal agencies, *arising out of Student's suspension* and referral to a county community day school. *In addition, Parents hereby waive any and all rights or benefits which they may have under terms of Section 1542 of the California Civil Code.*" (Italics added.) District argues that Student's child-find and FAPE claims "arise out of Student's suspension" and are thus covered by the specific release, and moreover, that Section 1542 of the California Civil Code bars all claims known or unknown arising prior to September 22, 2009.

On June 7, 2011, Student filed an Opposition to the Motion to Dismiss, arguing that its child-find and FAPE claims do not "arise out of Student's suspension" and are thus not

covered by the specific release, and moreover, that section 1542 of the California Civil Code does not apply for two reasons. First, the agreement does not contain a general release to which a section 1542 waiver must attach; second, Parents were not represented by counsel when they entered into the agreement, which was drafted by District and therefore must be construed against it. As explained below, the Motion to Dismiss is denied without prejudice to District raising the Agreement as a defense at hearing.

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.)

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

The plain language of the Agreement in Lieu of Expulsion does not resolve whether Student’s claims “arise out of Student’s suspension.” The language of the specific release is ambiguous in the context of Student’s allegations, and requires a factual finding regarding the parties’ intent of the scope of the release. The language of the Civil Code section 1542

waiver, unattached to any general release, is also ambiguous. Further, the parties' contentions regarding legal representation, who drafted the agreement, and how rules of construction should be applied here against the drafter, are factual in nature. Thus, District's arguments may prevail as a defense at hearing, but do not support a motion to dismiss.

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure. Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion is denied without prejudice to the District raising the Agreement as a defense at hearing. All dates currently set in this matter are confirmed.

IT IS SO ORDERED.

Dated: June 09, 2011

/s/

JUNE R LEHRMAN
Administrative Law Judge
Office of Administrative Hearings