

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TEMECULA VALLEY UNIFIED  
SCHOOL DISTRICT.

OAH CASE NO. 2011080092

ORDER GRANTING MOTION TO  
DISMISS

On August 2, 2011, Student filed a Request for a Due Process Hearing (complaint) against the Temecula Valley Unified School District (District). On August 25, 2011, the District filed a motion to dismiss, alleging that Student's complaint is barred by the terms of the parties' August 2010 Settlement Agreement (Settlement Agreement). Student did not submit a response.

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).) The Office of Administrative Hearings (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.)

More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 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.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code.

## DISCUSSION

Student’s complaint contains five issues for hearing. Issues 1 through 4 regard the District’s failure to convene, develop and implement an individualized education program (IEP) pursuant to the Settlement Agreement, and Issue 5 alleges violations of Section 504 and Section 1983.

As to Issues 1 through 4, the Settlement Agreement did not require the District to develop an IEP for Student during the 2010-2011 school year (SY), and additionally Student waived all claims against the District during SY 2010-2011 in return for the District funding Student’s private placement.<sup>1</sup> Further, the parties agreed that the private school would develop Student’s educational program and that the District would develop an individual

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<sup>1</sup> The Settlement Agreement contained two exclusions to the waiver language as to the District’s reevaluation of Student and the creation of an IEP for SY 2011-2012, neither of which is at issue in Student’s complaint.

services agreement for the private placement. Student's complaint fails to acknowledge the specific terms of the Settlement Agreement did not require the District to develop an IEP and that Student does not have the right to file a due process hearing to challenge the individual services agreement. (34 C.F.R. § 300.140(a) (2006).) Finally as to Issue 5, OAH does not have jurisdiction to hear Student's claims that the District violated Section 504 and Section 1983. Accordingly, Student's complaint is dismissed.

ORDER

The District's Motion to Dismiss is granted. The matter is dismissed.

Dated: September 2, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings