

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FAIRFIELD SUISUN UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012040652

ORDER GRANTING MOTION TO  
DISMISS ISSUE NO. 4

On April 12, 2012, Parent, on behalf of Student, filed a Request for Due Process Hearing (complaint) naming the Fairfield-Suisun Unified School District (District) and setting forth six issues (although the complaint did not identify a second issue). Issue No. 4 in the complaint addressed the District's alleged failure to comply with a request made by Parent at an individualized education program (IEP) team meeting on October 11, 2011 that an assistive technology consultant contact her to discuss mainstreaming and hearing aides for Student.

On April 27, 2012, District timely filed a Notice of Insufficiency (NOI) as to Student's complaint. In that Notice, the District argued that Issue No. 4 was barred by a settlement agreement between the parties executed in February 2012. On April 30, 2012, the Office of Administrative Hearings (OAH) issued an order finding Issues 3 and 4 sufficiently pled and Issues 1, 5, and 6 insufficiently pled, and giving Student leave to amend within 14 days. The Order declined to address the District's argument about the settlement agreement and Issue No. 4 because that argument should have been made in a motion to dismiss.

On May 4, 2012, the District moved to dismiss Issue No. 4 on the ground that it was barred by the settlement agreement. Student did not respond to the motion.

On either May 14 or May 16, 2012, Student filed a document entitled "Notice of Sufficiency" that pleaded the original Issues 1, 5, and 6, in greater detail. On May 16, 2012, OAH held a prehearing conference in the matter and accepted Student's "Notice of Sufficiency" as a first amended complaint.

On May 29, 2012, the District filed a second NOI, contending that the first amended complaint was still insufficient as to Issues 1, 5, and 6, and failed to identify any Issues 2, 3, and 4.

On May 30, 2012, the Office of Administrative Hearings (OAH) ruled that Issues 1, 5, and 6 were still insufficiently pled and gave Student 14 days to amend the complaint.

That Order provided that for clarity, Student's Issues 3 and 4 in the original complaint would be deemed part of the first amended complaint, and were adequately pled. The May 30, 2012 Order also provided that if Student amended his complaint, he should include Issues 3 and 4 in the newly amended complaint so the entirety of his complaint would be in one document.

On June 1, 2012, the District filed a request for a ruling on its May 4, 2012 motion to dismiss Issue No. 4. On June 4, 2012, OAH issued an order deferring ruling on the District's motion until after June 13, 2012. That order provided in part:

If Student does not timely file a second amended complaint and the matter proceeds on Issues No. 3 and 4 from the original complaint, then the District's motion to dismiss Issue No. 4 will be deemed to have been refiled on June 13, 2012, and Student shall have three business days to respond to it.

Student did not file a second amended complaint and did not oppose the District's renewed motion to dismiss Issue No. 4.

#### 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*].)

OAH may dismiss all or part of a complaint if the moving party shows that further litigation of the subject matter is barred by a settlement agreement. 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 AND ORDER

Issue No. 4 in the original complaint read as follows:

Parent requested on 10-11-11 IEP that assistive technology caseworker contact her to discuss mainstreaming/hearing aid. This request has never been granted.

The District's motion to dismiss Issue No. 4 establishes that, on February 15, 2012, to settle a previous due process dispute, Parent and the District entered into a written agreement in which Parent waived any and all claims of any kind arising on or before February 15, 2012. Issue No. 4 states a claim arising on October 11, 2011.

Parent has never filed an opposition to the motion to dismiss. The District has sustained its burden of demonstrating that litigation of Issue No. 4 in the original complaint is barred by the agreement between the parties dated February 15, 2012. Accordingly, Issue No. 4 may no longer be considered in this matter. The Motion to dismiss Issue No. 4 is granted.

SO ORDERED.

June 21, 2012

/s/

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CHARLES MARSON  
Administrative Law Judge  
Office of Administrative Hearings