

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BELMONT-REDWOOD SHORES
ELEMENTARY SCHOOL DISTRICT.

OAH CASE NO. 2012080014

ORDER DENYING MOTION TO
DISMISS

On July 31, 2012, Natashe Washington, attorney at law, filed with the Office of Administrative Hearings (OAH) a request for a due process hearing (complaint) on behalf of Student, naming the Belmont-Redwood Shores Elementary School District (District). On August 6, 2012, Jan E. Ellard, attorney at law, filed a motion to dismiss, notice of insufficiency (NOI) and a request for sanctions on behalf of the District.¹ On August 9, 2012, Student filed an opposition to the District's motion.

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

¹ The District's NOI and request for sanctions are each addressed in separate orders.

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.)

DISCUSSION

Student raises six claims against the District in her complaint. Issues One through Four and Issue Six are subject to the District’s motion to dismiss and involve allegations that the District has failed to comply with the terms of the September 2011 settlement agreement resulting in a denial of a free appropriate public education (FAPE). Student’s issues are as follows. Did the District deny Student a FAPE by: (1) failing to provide speech and language services; (2) failing to reimburse Parents for Student’s private preschool placement; (3) failing to provide Applied Behavior Analysis (ABA) services which included educational services; (4) failing to continue Student’s private preschool placement through August 28, 2012; and (6) failing to provide prior written notice? Student alleges that the items delineated in Issues One through Four were agreed to in the September 2011 settlement agreement.

The District attaches the settlement agreement to its motion to dismiss. In addition, it provides a declaration under penalty of perjury from Maria Lang-Gavidia, the District’s director of student services, authenticating the attached agreement. In its motion to dismiss,

the District requests that Student's Issues One through Four and Issue Six be dismissed because they are mere claims for breach of the settlement agreement and therefore beyond the jurisdiction of OAH. The District's contention is not correct. Student is alleging that the District denied Student a FAPE through its failure to provide agreed upon services, namely speech and language services and ABA educational services. These services were set out as prospective services designed to provide Student a FAPE, not as compensatory education for an alleged prior failure to provide FAPE. Furthermore, the parties specifically agreed at page two of the settlement agreement, subsection (f), that the District's reimbursement of up to \$300 per month for the private preschool selected by the parents, as well as the ABA services, shall be reflected in an IEP addendum. Once the reimbursement was incorporated into an IEP, it became a necessary service and whether the reimbursement was provided raises an issue of whether Student was provided a FAPE. If reimbursement was not specifically incorporated into the IEP, then the District's position may have been correct, that a claim for reimbursement, pursuant to a settlement agreement (Issues Two and Four) would not come within OAH's jurisdiction. In this matter, District's alleged failure to reimburse Student's preschool placement raises a denial of FAPE and is within the jurisdiction of OAH.

The District next argues that if OAH deems Student's issues to appropriately raise the denial of a FAPE, Student unambiguously waived all such claims upon signing the 2011 settlement agreement, and released all claims against the District through August 28, 2012. The District's position is not supported by the plain terms of the waiver language found at page three of the settlement agreement. The parties agreed,

Except for the District's obligations to provide the services set forth in Student's IEP and set forth in this Agreement, Parents, on behalf of Student, agree to accept the terms of this Agreement as full and complete settlement of any and all claims related to Student's educational placement, mental health services and support and all related services through August 28, 2012.
[Emphasis added.]

Giving these words their plain meaning and common sense interpretation, Student did not waive future claims regarding the implementation of the IEP and the District's obligations to perform as specified in the settlement agreement.

Pursuant to the authority discussed above, and based upon the plain language of the settlement agreement that claims regarding a failure to implement the agreed upon services are not precluded, OAH has jurisdiction to entertain Student's issues.

ORDER

The District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: August 9, 2012

/s/

THERESA RAVANDI
Administrative Law Judge
Office of Administrative Hearings