

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN BERNARDINO COUNTY
SUPERINTENDENT OF SCHOOLS.

OAH CASE NO. 2013070240

ORDER DENYING MOTION TO
DISMISS

On July 3, 2013, Student filed a Request for Due Process Hearing (complaint), naming San Bernardino County Superintendent of Schools (SBCSS) with the Office of Administrative Hearings (OAH). On July 12, 2013, SBCSS filed Motion to Dismiss, alleging that although Student attended a special day class (SDC) that it operated, it was not the responsible public agency to provide Student with a free appropriate public education (FAPE). OAH received no response to the Motion to Dismiss from Student.

APPLICABLE LAW

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.)

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

SBCSS contends that it is not responsible for providing Student with a FAPE because Student is a resident of the Redlands Unified School District (Redlands) and attended an SDC operated by SBCSS pursuant to an individual educational program (IEP) with Redlands from 2011 through the present. Further, Student entered into a settlement agreement with Redlands that resolved all claims for this period, even though SBCSS was not a party to that action.¹

While David Berry, principal of the school student attended, executed a declaration that SBCSS did not “control, direct, or participate in any final” IEP decisions, including placement, Mr. Berry does not dispute that SBCSS provided special education services to Student, which makes SBCSS a responsible public agency pursuant to Education Code, sections 56500 and 56028.5. (See *Student v. Montebello Unified School District, Los Angeles County Office of Education, and Bellflower Unified School District* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2008090354, pp. 38-39.) Additionally, because Student alleged that SBCSS evaluated Student and made placement decisions, a triable issue for hearing exists as to SBCSS’s involvement in special education decisions regarding Student. (Ed. Code, § 56501, subd. (a).) Finally, whether Student’s settlement agreement with Redlands bars Student’s claims against SBCSS cannot be determined presently because SBCSS did not attach a copy of the settlement agreement for review. Accordingly, SBCSS’ motion to dismiss is denied.

ORDER

SBCSS’s Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: July 22, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

¹ In the alternative, SBCSS requested that OAH join Redlands as a party if OAH denied its motion to dismiss. Because SBCSS did not serve a copy of its motion on Redlands, OAH cannot rule on its request.