

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013101100

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On October 29, 2013, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH), naming the Long Beach Unified School District (District). On November 8, 2013, the District filed a Motion to Dismiss, alleging that claims that occurred before October 29, 2011, were barred by the two-year statute of limitations. On November 14, 2013, Student filed an opposition. On November 18, 2013, the District filed a reply.

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.)

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.).

The statute of limitations in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C).) However, title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (1), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency's withholding of information from the parent that was required to be provided to the parent.

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's 50 page complaint contains 14 issues, with some of the issues dating back to 2007, regarding the District's purported failure to protect Student from bullying, conduct required assessments, implement Student's individualized education program (IEP), hold IEP team meetings, and to implement the parties' two settlement agreements, the first on July 21, 2010, and the second on March 29, 2011. The District asserts that Student's claims that occurred before October 29, 2011, are barred by the two-year statute of limitations.¹ Student asserts that his claims that pre-date October 29, 2011, are not barred because of the exception to the statute of limitations due to the District's misrepresentations and because Parent discovered the claims within the past two years as she was unaware of the District's violations.

¹ The District raises in its reply brief that OAH does not have jurisdiction to hear Student's claims regarding enforcement of the parties' settlement agreement pursuant to *Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 and *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541. However, the District failed to raise this legal argument in its moving papers and therefore it will not be considered in this order.

Regarding Issue 1, Student's claims that the District failed to conduct behavioral and social-emotional assessments that occurred on or before July 21, 2010, are barred by the terms of the parties' settlement agreement of that date. As to claims between July 22, 2010 and October 28, 2011, the complaint contains sufficient allegations that the District committed misrepresentations regarding implementing the settlement agreements that caused Parent not to file the complaint.

For Issue 2, Student alleges that the District failed to conduct a vocational assessment, which is the specific assessment in the March 29, 2011 settlement agreement and the claim that Student waived as of the date of the agreement. Therefore, claims in Issue 2 that occurred on or before March 29, 2011, are barred by the settlement agreement. As to claims between March 29, 2011 and October 28, 2011, the complaint contains sufficient allegations that the District committed misrepresentations that caused Parent not to file the complaint.

Regarding Issues 3 and 7, allegations in these issues are within the two-year statute of limitations.

Regarding Issues 4 and 5, Student's claims that the District failed to conduct Student's triennial assessment and develop a behavior plan that occurred on or before July 21, 2010, are barred by the terms of the parties' settlement agreement of that date. As to claims between July 22, 2010 and October 28, 2011, the complaint contains sufficient allegations that the District committed misrepresentations regarding implementing the settlement agreements that caused Parent not to file the complaint.

As to Issues 6, 8 and 13, Student alleges that the District failed to implement his IEP for the first part of the 2011-2012 school year, failed to hold timely IEP team meetings and did not protect Student from bullying. As to any claim in Issue 13 that occurred on or before July 21, 2010, those claims are barred by the parties' settlement agreement. Further, none of these claims between July 22, 2010 and October 28, 2011, meet an exception to the two-year statute of limitations because there are no claims that the District took affirmative actions that caused Parent not to file a complaint or the District withheld information. Additionally, the fact that Parent might not have known of the alleged violation does not mean that she should not have known as she knew of the incidents alleged. Therefore, claims in Issues 6, 8 and 13 that occurred before October 29, 2011, are barred by the statute of limitations.

Student alleges in Issues 10, 11 and 12 that the District failed to implement the July 21, 2010 and March 29, 2011 settlement agreements at all times after the execution of the settlement agreements. The complaint contains sufficient allegations that the District committed misrepresentations regarding implementing the settlement agreements that caused Parent not to file the complaint, and thus these issues are not barred by the statute of limitations.

Finally, OAH does not have jurisdiction to hear Issue 14 since it alleges a violation of Section 504.

ORDER

1. The District's Motion to Dismiss is granted as follows:
 - a. Issues 1, 4, and 5: Claims that occurred on or before July 21, 2010.
 - b. Issue 2: Claims that occurred on or before March 29, 2011.
 - c. Issues 6, 8, and 13: Claims that occurred on or before October 28, 2011.
 - d. Issue 14 in its entirety.
2. The District's Motion to Dismiss is denied as follows, and may proceed:
 - a. Issues 1, 4 and 5: Claims that occurred on or after July 22, 2010.
 - b. Issue 2: Claims that occurred on or after March 30, 2011.
 - c. Issues 3, 7, 10, 11 and 12: These claims proceed in their entirety.

Dated: November 25, 2013

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings