

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT and
VALLEY MOUNTAIN REGIONAL
CENTER.

OAH CASE NO. 2013110146

ORDER GRANTING LODI UNIFIED
SCHOOL DISTRICT'S MOTION TO
DISMISS

On December 16, 2013, Lodi Unified School District (District) filed a motion to dismiss Student's request for a due process hearing (complaint), which he filed on October 31, 2013.¹ On December 18, 2013, Student filed an opposition to the District's motion. On December 19, 2013, the District filed a response to Student's opposition, and Student responded to the District's response on the same date. Then Student filed a supplemental 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 pertaining to compliance with the earlier order were beyond its jurisdiction. This ruling was

¹ Valley Mountain Regional Center also filed its own motion asking that it be dismissed as a party, which will be ruled upon in a separate order.

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. March 27, 2007, No C 05-04977 VRW) 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.) A party may amend a complaint no later than five days before a due process hearing is to commence. (Ed. Code § 56502, subd. (e).) Otherwise, a party cannot raise issues at a due process hearing that were not presented in his complaint or amended complaint, unless the other parties in the matter consent. (Ed. Code § 56502, subd. (i).)

DISCUSSION

In June 2013, Student filed a complaint against the District. The parties reached a negotiated settlement agreement in mediation in which the District agreed to fund a 90 day diagnostic placement at Heartspring, a residential treatment facility in Wichita, Kansas. The agreement is clear that this was not to be a permanent placement for Student. In consideration of the trial placement, Student waived all claims through the end of the diagnostic placement, and agreed to dismiss his complaint with prejudice, which he did. The 90 day placement began September 3, 2013, and ended December 3, 2013. Student filed his complaint on October 31, 2013, alleging that the District failed to offer permanent residential placement at Heartspring at an IEP team meeting held on October 28, 2013. In the complaint, Student also alleges procedural violations in the convening of this IEP team meeting.

The District asks that it be dismissed from this proceeding because, due to the waivers in the settlement agreement which it attached to the motion, Student was precluded from filing a complaint against it prior to December 3, 2013. In his opposition, Student claims that he could file his complaint before December 3, 2013, based on the District's refusal at the IEP team meeting in October 2013, to place him permanently at Heartspring. Student bolsters that argument by attaching the notes from a subsequent IEP team meeting held on November 21, 2013, at which the District again refused to place Student in a residential facility. In his supplemental opposition, Student also claims that the District had no legal right to file its motion to dismiss at such a late date, claiming that the concept of *laches* is applicable.²

The settlement agreement is unequivocal in its terms, and is clear that Parents knowingly waived all claims that might accrue during the 90 day diagnostic placement, including claims that Student was denied a FAPE. Further, Parents specifically agreed that the 90 day placement was not intended to become a permanent placement. The permanent placement would be determined at an IEP team meeting to be held during the diagnostic placement. The parties clearly contemplated that there would be one or more IEP team meetings during the diagnostic placement, to consider Heartspring's assessments and recommendations. Student had no legal right to file another complaint with OAH until the termination of the diagnostic placement.

In his supplemental opposition, Student argues that the District should have filed a notice of insufficiency, which must be filed within 15 days of the filing of a complaint, and not waited until the termination of the diagnostic placement to file the motion to dismiss. However, a notice of insufficiency is not appropriate in this matter because District's motions goes beyond the facts alleged in Student's complaint. Further, there is no law requiring a motion to be dismissed to be filed within a certain time period.

ORDER

The District's motion to dismiss is granted.

Dated: December 26, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings

² Black's Law Dictionary (9th ed. 2009), defines "laches" as "a legal concept that one parties delay in doing an act has resulted in harm to the other party, even if the delay is statutorily allowed."