

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2016040931

ORDER GRANTING CHINO
VALLEY'S MOTION TO DISMISS
WITHOUT PREJUDICE

Student filed a request for due process hearing (complaint) with the Office of Administrative Hearings on April 15, 2016, naming the Beaumont Unified School District, the Chino Valley Unified School District, the Bassett Unified School District, and the Rowland Unified School District. In synthesis, Student alleges that the four school districts denied him a free appropriate public education during the 2015-2016 school year by breaching a September 5, 2015 settlement agreement between him and the four districts. Student alleges that the districts failed to provide him with an independent educational evaluation and an individualized education program team meeting to discuss the recommendations from the independent evaluation as required by the parties' settlement agreement.

On April 29, 2016, Chino Valley filed a request to be dismissed as a party.¹ Chino Valley contends that Student's complaint should be dismissed for various reasons. First, Chino Valley argues that the issue framed by Student in his complaint is moot, because the independent evaluation at issue was completed just after Student filed his complaint. Second, Chino Valley contends that there is no issue of FAPE presented by Student's complaint because Chino Valley was not and is not presently responsible for providing Student with a FAPE. Neither Student nor his parent resides within Chino Valley's boundaries and the school Student attends is also not within its boundaries. Therefore, because Chino Valley is not responsible for providing Student with an education, Student's contention that the settlement provisions applicable to Chino Valley have not been met amount to a mere contract dispute rather than a potential denial of FAPE.

¹ Bassett, Beaumont, and Rowland filed respective motions to be dismissed as a party to this case, which OAH has granted in previously issued orders.

On May 2, 2016, Student filed an opposition to Chino Valley's motion to dismiss. Student acknowledges that the independent evaluation was completed after he filed his complaint. However, Student contends that completion of the evaluation was untimely, and that the delay in completion *may* (emphasis added) result in the inability of his IEP team to determine an appropriate placement for him for the upcoming 2016-2017 school year. Student therefore maintains that he should be permitted to maintain an action for alleged denial of FAPE as to Chino Valley.

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.)

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. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].)

OAH's 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 school 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 claims alleging the school district's failure to comply with the earlier settlement agreement. The California Special Education Hearing Office (SEHO), OAH's predecessor in hearing IDEA due process cases, determined that the issues pertaining to compliance with the earlier order were beyond its jurisdiction, and 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, § 4650), 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.)

However, in *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 WL 949603, the District Court held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues

involving merely a breach of the settlement agreement 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.)

However, even when OAH has jurisdiction over the subject matter raised in a complaint, there is still no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution "if it rests upon 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is "to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

DISCUSSION

The settlement agreement between Student and the four originally named respondents in this case stated specific obligations of each party. In addition to paying a portion of the overall amount of attorney's fees provided to Student, Chino Valley's obligation was to contract with two identified independent assessors and to fund the independent assessments. These obligations were shared by the West End Special Education Local Plan Agency, to which Chino Valley belongs, although West End was not a named party to the prior due process case and is not named in the instant proceeding.

The settlement stated that if the assessors were unable or unwilling to complete the independent assessments or were not able to complete the assessments in a timely manner, Student and the four districts agreed that the parties would select mutually agreeable alternate assessors. The settlement does not define what would constitute a "timely manner," but does specify that statutory timelines were not applicable for the completion of the independent assessment. The parties therefore agreed that an individualized education program team meeting might have to be held after the one agreed by the parties to be held soon after the start of the 2015-2016 school year. That IEP team meeting apparently was convened as agreed to by the parties. The independent assessment had not been started at

that point, so it could not be discussed. It is this delay upon which Student bases his instant due process complaint.

However, the settlement agreement does not place upon Chino Valley any obligation to provide Student with a FAPE or to even provide him with any educational programming. Rather, that obligation fell to Beaumont, the school district that agreed through the settlement to fund Student's placement at the non-public school he presently attends. Pursuant to the settlement agreement, the placement runs through the end of the 2015-2016 school year, which has not yet concluded. Student's due process complaint identifies Beaumont as Student's school of residence. Student does not dispute that he is a resident of Beaumont and that Beaumont alone is tasked with providing Student with a FAPE during the 2015-2016 school year. Beaumont's obligation to provide Student with a FAPE is based upon Student's residency at the non-public school, which is located within Beaumont's boundaries, and based upon the terms of the settlement agreement, none of which Student disputes. Because Chino Valley is not Student's district of residence, and was not obligated to provide Student with a FAPE or to even fund the non-public placement by the terms of the settlement agreement, even had Chino Valley violated the terms of the settlement such a violation could not amount to a denial of FAPE. Assuming that Chino Valley's delay in contracting with the assessors, and/or that the assessors' delay in administering the independent assessment amounted to a violation of the terms of the settlement agreement, remedying that delay would amount to pure enforcement of the settlement. As discussed above, enforcement of settlement agreements is outside of OAH's jurisdiction unless the failure to comply with a settlement could amount to a denial of FAPE. For these reasons, Chino Valley's motion to dismiss is granted.

Additionally, even if the action to enforce the settlement was within OAH's jurisdiction, the issue is not yet ripe for adjudication. The terms of the settlement call for the independent assessment to be completed and an IEP team meeting convened subsequent to its completion in anticipation of determining an educational program for Student for the 2016-2017 school year. The present school year is not yet over. Assuming Student is entitled to extended school year services, the extended school year has not begun. Student argues that it is probable that his IEP team will not be able to formulate an IEP offer for him in time for the next school year, but his argument is pure conjecture. As stated above, a due process claim is not ripe for resolution if it is based upon contingent future events that may not happen as alleged, or may not happen at all. Student's allegations are premature, and his complaint is therefore dismissed on the additional ground that it is not ripe for resolution at this time.

ORDER

Chino Valley's motion to dismiss is granted, without prejudice. Since Chino Valley is the only remaining respondent, this matter is dismissed. All dates are vacated.

DATE: May 16, 2016

DocuSigned by:

Darrell Lepkowsky

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings