

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

CHINO VALLEY UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009030694

ORDER DENYING MOTION TO  
DISMISS

Student filed a due process hearing request (complaint) on March 16, 2009. The complaint alleged that Student had been denied a free appropriate public education (FAPE) for the 2008-2009 and 2009-2010 school years because at an IEP team meeting on March 6, 2009, Student was not offered four hours per week of one-to-one intensive instruction after school. On March 17, 2009, Chino Valley Unified School District (District), filed a Motion to Dismiss the Complaint on the ground that the allegations of the complaint had previously been addressed by a resolution agreement dated July 3, 2008. Student opposed the motion on the ground that the current complaint was seeking prospective relief and the services agreed to in the resolution agreement ended March 18, 2009. For the reasons set forth below, the District's motion to dismiss lacks merit.

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.* (9<sup>th</sup> Cir. 2000) 223 F.3d 1026, 1028-1029 [hereafter *Wyner*].) 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 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.)

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.)

Here, the District included a copy of the resolution agreement as an exhibit to its motion. The resolution agreement unambiguously states that the District agreed to provide four hours of intensive, individual instruction to Student up to March 18, 2009, and that the service provided up to that date would not be considered as stay-put. Nothing in the resolution agreement supports the proposition that Student is barred from filing a complaint to address whether Student requires four hours of tutoring services after March 18, 2009 in order to receive a FAPE. Thus, although Student's claims regarding tutoring services in the instant complaint are limited to provision of FAPE after March 18, 2009, dismissal of the complaint is not warranted. The motion to dismiss is denied.

It is so ordered.

Dated: March 24, 2009

/s/

---

RICHARD T. BREEN  
Administrative Law Judge  
Office of Administrative Hearings