

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

SAN RAMON VALLEY UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2009061041

ORDER DENYING MOTION TO
DISMISS

On June 18, 2009, Laurene B. Bresnick, attorney for Student, filed a Request for Due Process Hearing (complaint), naming the San Ramon Valley Unified School District (District). On September 3, 2009, Sarah L. Daniel, attorney for District, filed a Motion to Dismiss Student’s complaint. On September 9, 2009, Student filed a response 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 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.*, 2007 U.S. Dist. LEXIS 26541 (D. Cal. 2007), 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.)

DISCUSSION

In his complaint of June 18, 2009, Student raised a single claim. Student alleged that the District violated his procedural rights by unilaterally terminating tutoring services on September 1, 2007. In subsections to the single claim, Student alleged the District terminated tutoring services in violation of an IEP dated April 28, 2003, which was subsequently reaffirmed through settlement agreements. Student alleged that he had expressly reserved the right to this claim in the post April 28, 2003 IEP and settlement agreements, and that the District was required to have taken Student to due process hearing prior to terminating the tutoring services. Student’s requested resolutions were a determination that he required the tutoring and that his parents were entitled to reimbursement for tutoring services provided since September 1, 2007.

On September 9, 2009, the parties participated in a prehearing conference. The Order Following Prehearing Conference, issued on September 9, 2009, states that the sole issue for hearing was set forth in Student’s Prehearing Conference Statement of September 3, 2009.

In his prehearing statement Student framed the issue as whether the District violated his rights by terminating tutoring services previously agreed to and provided consistent with IEPs, and settlement agreements, wherein Student expressly reserved his right to pursue a claim regarding the continuation of the services. The issue is substantially similar to the issue raised in the complaint. His proposed resolutions were the same as those requested in the complaint.

In its Motion to Dismiss, District requests that the complaint be dismissed because Student released those claims against the District as of the date of the fully executed agreement, dated December 9, 2008. Student acknowledges in his complaint that the parties entered a final settlement agreement on December 9, 2008. However, Student contends the claims in the above-titled proceeding were not resolved as part of the settlement agreement.

Central to the parties' position is language contained in three settlement agreements from 2003, 2006 and 2008. The parties submitted the three settlement agreement documents in support of each of their positions. The pertinent language from each settlement is as follows:

Settlement Agreement of September 5, 2003

2(D): Nothing in this agreement shall be construed as an agreement to change the April 28, 2003 IEP as amended and as consented to on September 5, 2003. Any changes to that IEP must be in writing and agreed to by both parties in accordance with law.

Settlement Agreement of December 17, 2006¹

B(8): District agrees to prospectively reimburse Parent for 7.5 hours per school week of after school tutoring . . . between the date of this agreement and completion of the 2007 Extended School Year In the event that a dispute arises regarding Student's program for the 2007-2008 school year, these tutoring hours shall not constitute any part of Student's stay put program. However, notwithstanding any other provision of this Agreement, Petitioner and Parents expressly reserve their right to contend that stay put should include tutoring services indicated on the September 5, 2003 addendum to the April 28, 2003 IEP.

Settlement Agreement of December 9, 2008

C: [E]xcept that Student and Parents reserve the right to pursue a claim for reimbursement for after school tutoring services since the commencement of the 2007-2008 school year based on a continuation of the same Parent reservation of rights contained in Paragraph B.8. of the 2006 Confidential Compromise and Release Agreement between the parties. Nothing in this paragraph prevents either party from raising any and all arguments pertaining to the validity of the Parent's reservation of rights in either agreement, including the statute of limitations. This exception does not include the right to argue that such services, through the date of this Agreement, were

¹ The parties refer to this agreement as the 2006 settlement agreement, though the agreement was signed on March 2, 2007.

substantively required as part of [free appropriate public education] FAPE, only that such services were procedurally required.

D(3)(i): [S]tudent and Parents reserve the right to make a procedural claim for tutoring services based on the reservation of rights herein and in the 2006 agreement.

The District raises three grounds for dismissal. It asserts that the Student's claim is waived under prior settlement agreements; the tutoring services requested are not part of Student's stay put; and, a request for services as stay put cannot be the basis for a claim.

Waiver Pursuant to Settlement

The District asserts that the December 19, 2008 settlement agreement (2008 agreement) limited any claim by Student regarding tutoring as a "stay put" claim pursuant to the language of the December 17, 2006 settlement agreement (2006 agreement). The District argues that because Student has not raised it as a stay put claim, his claim is barred by the 2008 agreement. The Student contends that the September 5, 2003 settlement agreement (2003 agreement) reserved claims regarding services agreed upon in the April 28, 2003 IEP, as amended by the September 5, 2003, addendum, and continually reserved in the 2006 and 2008 agreements.

The Student's reliance on the 2003 agreement is misplaced. The 2006 agreement specifically stated that should a dispute arise for the 2007-2008 SY, the parties do not have an agreement upon whether the tutoring services pursuant to the September 5, 2003, addendum constitute stay put. It does not state that the parties continue the agreement to tutoring services consistent with either the September 5, 2003, addendum to the April 28, 2003, IEP or consistent with the 2003 agreement.

The District's reliance upon the language in the 2006 agreement limiting the issue to stay put is equally misplaced. The key language is that of the 2008 agreement, specifically allowing Student to pursue a claim for reimbursement for after school tutoring services from the commencement of the 2007-2008 SY. It continues the claim for the right to dispute stay put from the 2006 agreement. However, the 2008 agreement goes on to include language regarding Student's right to bring a procedural FAPE claim for the tutoring services. In two separate paragraphs, the 2008 agreement refers to the right of Student to bring a procedural claim. Student's claim is pled consistent with the parties 2008 agreement and is not barred by the 2008 agreement.

Claim as a Request for Stay Put

The District's remaining grounds for dismissal are based upon the characterization of Student's claim as a request for stay put. Student has not requested stay put. Student's complaint does not put forth a theory of stay put. Student has specifically raised the issue of

whether the District was procedurally required to continue the services beyond September 1, 2007. He seeks a remedy of reimbursement and continuation of the tutoring services. Both remedies are ones permitted under the parties 2008 agreement that allowed Student to challenge whether the District's termination of the service was a procedural violation. Pursuant to the authority discussed above, OAH does have jurisdiction to entertain these claims.

ORDER

District's Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: September 17, 2009

/s/

BOB VARMA
Administrative Law Judge
Office of Administrative Hearings