

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

LEGAL GUARDIAN, ON BEHALF OF
STUDENT,

v.

GARDEN GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2010041542

ORDER DENYING DISTRICT'S
MOTION TO DISMISS

On April 28, 2010, Student filed a request for due process (complaint) alleging that District denied Student a free and appropriate public education (FAPE) by failing to hold Student's annual IEP and make an offer of placement and services for the time period of May 5, 2008 through June 17, 2009. Consequently, Student is seeking reimbursement for self-funded educational services and mileage from May 5, 2008 through June 17, 2009.

On July 30, 2010, District filed a motion seeking to dismiss Student's complaint as to all claims predating May 7, 2009. Specifically, District contends that the claims raised by Student in his present complaint were resolved by a May 7, 2010 settlement agreement in connection with complaints filed by both parties in early 2009. In Student's 2009 complaint, Student alleged, among other things, that his annual/triennial IEP should have taken place on or before May 15, 2008, but that District failed to complete assessments, and hold a timely IEP to review the assessments. As such, Student contended District denied him a FAPE. In District's 2009 complaint, it alleged that Student's guardian did not consent to the assessments until May 15, 2008, and then failed to make Student available for all assessments. Consequently, District sought an order declaring that it had a right to complete Student's triennial assessment, pursuant to the May 15, 2008 assessment plan. The matters were consolidated, and the parties subsequently entered into a settlement agreement on May 7, 2010.

The settlement agreement provided the following:

The purpose of this Agreement is to compromise and settle fully and finally all differences, disputes, and controversies existing between the Parties related to the consolidated cases of 2009020458 and 2009040166.

The agreement also provided:

This Agreement resolves any and all issues between the Parties raised in the consolidated OAH Cases 2009020458 and 2009040166 up to and including the date of execution of this Agreement.

In its motion to dismiss, District argues that Student's 2009 complaint raised the issue of District's failure to hold a May 2008 annual/triennial IEP meeting, and Student has alleged the same failure in his present complaint. Because the 2009 complaint was fully and finally settled by the parties through the May 7, 2009 settlement agreement, District contends Student's claims are barred up to May 7, 2009, leaving the only time period at issue as that between May 7, 2009 and June 17, 2009. District further argues that the language of the settlement agreement, where it settles "all differences, disputes, and controversies existing between the Parties related to" the consolidated cases, as well as resolves "any and all issues between the Parties raised in" the consolidated cases, governs. As such, the question of whether District violated Student's rights by failing to hold an IEP in May 2008, as Student alleged in his present complaint, was related to and raised in the consolidated cases, and are consequently barred by the settlement agreement.

On August 4, 2010, Student filed an opposition to District's motion, contending that the issues raised in the consolidated cases were not the same as those raised in his present complaint. Specifically, Student contends that the issues raised in the consolidated cases dealt with assessment issues, while the issue raised in the present complaint focuses on reimbursement. In addition, Student argues the settlement agreement included no release or waiver language, as it was not intended to do anything more than resolve the then pending OAH cases.¹ In support of this proposition, Student included the declaration of Tania Whiteleather, Attorney at Law, who was Student's counsel of record for his 2009 complaint. Ms. Whiteleather stated that the settlement agreement was intended only to resolve the specific issues addressed in the consolidated matters, which addressed triennial assessments. In addition, Ms. Whiteleather stated that the settlement agreement was prepared by District's counsel.

On August 5, 2010, District filed a reply to Student's opposition reiterating the "related to" language of the settlement agreement. On August 5, 2010, Student filed a sur-reply reiterating that the 2009 issue concerned District's failure to convene an IEP to review assessments within 60 days of the assessment plan executed on May 15, 2008.

As discussed below, the motion must be denied.

¹ Student also includes determinations reached by the California Department of Education (CDE) to support his opposition. However, OAH is not bound by the findings of the CDE, and the findings were not considered in this order.

APPLICABLE LAW AND ANALYSIS

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.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment 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.)

The Individuals with Disabilities Education Act (IDEA) specifically states that nothing in the Act shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (20 U.S.C. § 1415(o); 34 C.F.R. § 300.513(c) (2006); Ed Code, § 56509.) Therefore, although parties are precluded from relitigating issues already heard in previous due process proceedings, parents are not precluded from filing a new due process complaint on issues that could have been raised and heard in the first case, but were not.

Here, the plain language of the settlement agreement addressed the differences, disputes, and controversies of the consolidated cases. This ALJ reviewed the complaints of the consolidated matters, and noted that both were limited to assessment issues. Neither matter addressed reimbursement issues related to self-funded educational services, as set forth in the present complaint. Furthermore, the settlement agreement did not include any release or waiver language barring all claims concerning Student predating the settlement agreement. Without such waiver language, Student was free, pursuant to the IDEA, to file a separate complaint, even if he could have brought the complaint at the same time as his 2009 complaint.

ORDER

District's Motion to Dismiss is denied.

Dated: August 6, 2010

/s/

CARLA L GARRETT
Administrative Law Judge
Office of Administrative Hearings