

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

MONTEREY PENINSULA UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2010080151

ORDER GRANTING PART AND
DENYING PART OF MOTION TO
DISMISS

On August 4, 2010, Parent on behalf of Student (Student) filed a Request for Mediation and Due Process Hearing (Complaint), naming Monterey Peninsula Unified School District (District). On August 9, 2010, Elizabeth Rho-Ng, attorney for District, filed a Motion to Dismiss with Prejudice (Motion). On August 10, 2010, Student filed a response opposing District's motion related to issues three, four and five of the complaint.

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. (*Wyner, supra*, 223 F.3d at p. 1030.) More recently, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 26541, 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.

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

Student alleges six issues against District in the complaint. Issue six was dismissed on August 6, 2010, by order of an Administrative Law Judge in response to a Notice of Insufficiency filed by the District. As part of that order, issues number one and two were considered for jurisdiction under a closely related theory as follows:

Issues number one and two allege that a settlement agreement dated December 2008 required an IEP meeting to be convened by March 31, 2009 to develop an IEP for the remainder of the 2008-2009 school year and for the 2009-2010 school year. Student alleges that District never convened that IEP meeting, and that as a result no IEP goals, objectives or mutually agreeable IEP were developed. District’s NOI argues that Issues one and two pertain to enforcement of a settlement agreement and are outside OAH’s jurisdiction.

Pursuant to the authority discussed above, OAH does have jurisdiction to entertain these claims. Issues one and two, construed liberally, allege that as a result of the breach of the settlement agreement, Student was denied a FAPE. 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.

For the reasons articulated above, OAH has found jurisdiction regarding issues one and two. Jurisdiction over issues three, four and five was not determined in the Order of Determination of Sufficiency of Due Process Complaint.

The District, in its Motion to Dismiss, requests that Student’s Complaint be dismissed because Student released all claims against the District as of the date of the fully executed Agreement, dated December 12, 2008, this claim will be considered as an affirmative defense. A copy of the settlement agreement is attached to District’s Motion to Dismiss. Student acknowledges in her Complaint that the parties entered a final settlement agreement in December 2008. However, Student contends the claims related to issues three, four and five in the above-titled proceeding were not merely a breach of the settlement agreement but, rather, a denial of a free appropriate public education (FAPE). Student presented no comment regarding issues one and two of the Complaint in his opposition to the District’s Motion.

First Issue

Student alleges: “[a]s per the settlement agreement signed December 2008 the District had agreed to convene an IEP meeting no later than March 31, 2009 in order to

develop and IEP for the remainder of the 2008-2009 school year and the 2009-2010 school year up to March 31, 2010. The District never convened that IEP and never developed any goals and objectives for [Student]. She never had an IEP.”

The Student accurately describes the obligation provided in paragraph 6 of the settlement agreement. Paragraph 13 of the settlement agreement states: “In addition to the releases set forth above, Student and Parents waive any claims that they now have, or that might hereafter arise, against the District, with respect to Student’s educational rights under the IDEA, California special education law (Ed. Code §§ 56000, et seq.), . . . including but not limited to the provision of FAPE, through the end of the 2009-2010 school year (including ESY 2010) or until one of the Termination Events set forth in paragraph 13 occurs, whichever is first. . . .” (Paragraph 13.)

Student has accepted a settlement agreement that resolves all matters presented in the first issue. The first issue in Student’s complaint relates completely to matters waived in Paragraph 13 of the settlement agreement. Since the first issue involves only whether the District breached the terms of the settlement agreement and Student has accepted this settlement agreement, the District’s affirmative defense in contract prevails. Accordingly, the District’s motion to dismiss Student’s first issue will be granted.

Second Issue

Student alleges: “[a]s per the settlement agreement signed December 2008 the District had agreed to convene an IEP meeting by March 31, 2010 in order to develop a mutually agreeable IEP. The District failed to do so.”

The second issue is similar to the first except for the school year affected. Since the second issue also involves whether the District breached the terms of the settlement agreement it is also a contract matter. Student has accepted a settlement agreement that resolves all matters presented in the second issue, the District’s affirmative defense in contract prevails. Accordingly, the District’s motion to dismiss Student’s second issue will be granted.

Third Issue

Student alleges: “[t]he District did not offer [Student] appropriate placement or services for the 2010-1011 school year. The District’s IEP proposes that [Student] skip a grade and attend a public school for 9th grade for the 2010-2011 school year. Coming from a 7th grade classroom last year [Student] is not socially or emotionally ready to attend her first year of high school in a public school. The services and environment that the District is offering are not sufficient for [Student] to continue to make progress.”

The District reasons that since the IEP was created during the period of time waived within the settlement agreement that it must be dismissed. However, Student’s issue, although based upon this IEP, is that Student is denied a FAPE for the 2010-2011 school

year. The injury alleged in Student's third issue is not barred by the settlement agreement. Accordingly, the District's motion to dismiss Student's third issue will be denied.

Fourth Issue

Student alleges: "[t]he District offers no adequate transition plan in the IEP from the non-public school to the public school."

The District reasons that since the IEP was created during the period of time waived within the settlement agreement that it must be dismissed. However, Student's issue, although based upon this IEP, is that Student is denied a FAPE for the 2010-2011 school year. The injury alleged in Student's fourth issue is not barred by the settlement agreement. Accordingly, the District's motion to dismiss Student's fourth issue will be denied.

Fifth Issue

Student alleges: "[w]e requested an independent educational evaluation at the District's expense on June 18, 2010. We disagree with the District's independent [named] evaluator[s] recommendations.

The District reasons that since the request for an independent education evaluation was made during the period of time waived within the settlement agreement that it must be dismissed. Regardless of the time when the independent education evaluation was completed, Student's disagreement with an outside evaluator's recommendation is not a denial of FAPE. Accordingly, the District's motion to dismiss Student's fifth issue will be granted.

ORDER

1. In regard to issues one, two and five of Student's complaint, the District's motion to dismiss is granted.
2. In regard to issues three and four of Student's complaint, the District's motion to dismiss is denied.

Dated: August 12, 2010

/s/

MICHAEL G. BARTH
Administrative Law Judge
Office of Administrative Hearings