

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ETIWANDA SCHOOL DISTRICT.

OAH CASE NO. 2010100803

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On October 15, 2010 Student filed a Request for Mediation and Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH) naming Etiwanda School District (District) as respondent. On October 28, 2010, District filed a Response to Student's Due Process Hearing Request and Motion to Dismiss Issues. District moved for dismissal of issues raised in issues one, two and three of the complaint on the following grounds (1) that OAH lacked subject matter jurisdiction of all claims for relief under section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act, and other civil rights claims, (2) that Student is barred from raising claims waived in prior settlement agreements reached at mediation on June 7, 2005 and at informal resolution on May 30, 2007 and allowing issues that are barred by the settlement agreements would require OAH to interpret or otherwise modify the terms of the agreement, and (3) that all issues related to claims prior to October 18, 2008 are barred by the statute of limitations.

On November 2, 2010, OAH granted Student an extension of time to oppose District's motion. On November 5, 2010 Student filed an opposition to the District's motion to dismiss issues. Student contends that exhaustion of remedies requirement in the Individuals with Disabilities Education Act (IDEA) requires Student to state his Section 504 claims in the IDEA proceeding. Student also contends that there is no justification for holding that OAH lacks subject matter jurisdiction over Section 504 claims that allege the denial of a free appropriate public education (FAPE) and that California Education Code § 56501 does not divest OAH of jurisdiction to decide FAPE claims brought under Section 504. Student further contends the issues alleged in his complaint do not apply to any previously settled matters, but pertain to claims that were not waived. Finally, Student contends that the two-year statute of limitations is not a bar to his claims arising prior to October 18, 2008 because Student did not learn of the facts alleged in the complaint that District failed to provide Student with an appropriately trained teacher until October 2010. For the reasons set forth below District's motion is granted in part and denied in part.

APPLICABLE LAW

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.)

OAH has jurisdiction to hear due process claims arising under the IDEA. (Ed. Code, §§ 56501, subd. (a) [setting forth IDEA issues subject to due process hearings], 56504.5 [requiring the California Department of Education to contract with an agency like OAH to conduct IDEA due process hearings]; 56505, subds. (c)(1) [hearing must be conducted by person with knowledge of the Education Code and the IDEA] & (f) [the hearing decision must be based on a finding of a substantive violation of the IDEA].)

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.)

Generally, OAH will entertain motions to dismiss allegations that are facially outside of OAH jurisdiction. For example, civil rights claims, section 504 and other discrimination claims under the Americans with Disabilities Act, or Section 1983 of Title 42 United States Code, and claims related to enforcement of settlement agreements are the types of claims that are amenable to dismissal without the need for testimony or witness credibility determinations. However, special education law does not provide for a summary judgment procedure.

The statute of limitations for IDEA claims is two years unless the parent was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or the local educational agency withheld information from the parent that was required to be provided to the parent. (Ed. Code, § 56505, subd. (1); see also 20 U.S.C. § 1415(f)(3)(C) & (D).)

DISCUSSION

The complaint contains three issues. All three issues in the complaint allege FAPE claims and allege violations of section 504 of the Rehabilitation Act of 1973 (Section 504), the Americans with Disabilities Act (ADA) and “all other state and federal laws protecting the rights of children with disabilities...” In his opposition Student asserts that these claims are made in the complaint in order to comply with the exhaustion requirements under IDEA. In addition Student cites an unpublished ninth circuit case as authority to support his contention that OAH has jurisdiction to decide FAPE claims brought under Section 504. Student has failed to provide any binding authority to support this contention. As stated, OAH jurisdiction is limited and may not entertain FAPE claims based upon Section 504, the Americans with Disabilities Act or to the extent Student intended to plead civil rights claims, under Section 1983 of Title 42 of the United States Code. Therefore, District’s motion to dismiss these claims in the complaint for lack of jurisdiction is granted.

All three issues in the complaint also allege FAPE violations from the 2005-2006 to and including the 2010-2011 school years. Student seeks relief for claims in the 2005-2006 and 2006-2007, school years and extended school year, including reimbursement for educationally related costs and expenses incurred by parents. District contends that the settlement agreements attached to District’s motion supports District’s motion to dismiss claims that were resolved in the 2005-2006 and 2006-2007 school years and allowing issues that are barred by the settlement agreements would require OAH to interpret or otherwise modify the terms of the agreement. While OAH has jurisdiction to interpret the language of a settlement agreement for purposes of determining which issues OAH has jurisdiction to decide, such is not required here. The Mediation Agreement dated June 7, 2005 was a full and final agreement and provided reimbursement to parents for educationally related expenses and purports to resolve all educational issues to date. The Informal Resolution Session Settlement Agreement dated May 30, 2007 was a full and final agreement and provided reimbursement to parents for educationally related expenses and resolved “all issues, disputes and controversies within the jurisdiction of OAH” to date. To the extent Student seeks relief for the claims resolved under the aforementioned settlement agreements District’s motion to bar these claims is granted.

The all three issues in the complaint also seek relief for alleged FAPE violations prior to October 15, 2008. Specifically the complaint alleges that parents did not learn or have reason to know that during the 2005-2006, 2007-2008 and part of the 2008-2009 that

Student's teachers had not satisfied the requirements for issuance of a credential to teach autistic children and that the parents were unaware until informed by counsel in October 2010. The District contends that the allegations in the complaint related to the 2005-2006, 2007-2008 and part of the 2008-2009 school years are time-barred by the two-year statute of limitations. Student contends that the statute of limitations is waived because Student did not learn of the facts giving rise to those claims until October 2010. The District fails to point to any authority that would require OAH to hear and determine the equivalent of a motion for summary adjudication on the statute of limitations without giving the petitioner the opportunity to develop a factual record regarding the exceptions. Accordingly, the District's statute of limitations arguments are rejected at this time, although they may be raised as a defense at hearing when the factual record is developed and not in this prehearing motion.

ORDER

1. District's Motion to Dismiss claims for relief in issues one, two and three of the complaint under Section 504, ADA and other civil rights claims as alleged in the complaint because such claims are outside OAH jurisdiction is granted.

2. District's Motion to Dismiss claims for relief in issues one, two and three of the complaint that were resolved by way of the settlement agreements dated June 7, 2005 and May 30, 2007 is granted.

3. District's Motion to Dismiss claims for relief prior to October 15, 2008 in issues one, two and three of the complaint on the grounds they are barred by the statute of limitations is denied.

IT IS SO ORDERED.

Dated: November 16, 2010

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings