

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

INGLEWOOD UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011060776

ORDER GRANTING IN PART AND
DENYING IN PART DISTRICT'S
MOTION TO DISMISS

On June 16, 2011, Student filed a Request for Due Process Hearing (complaint) naming District as the respondent. On June 24, 2011, District filed a Motion to Dismiss. OAH has received no response. As explained below, the Motion is granted in part and denied in part.

In the complaint, Student stated eight "legal issues" alleging various procedural and substantive denials of a free appropriate public education (FAPE) dating from September 2008 onward. Certain of Student's "legal issues" allege denials of FAPE both prior to and after June 10, 2011, a date that has relevance to District's Motion, as will be discussed below. For example, Issue One makes allegations spanning from September 2010 to the present, that District denied Student a FAPE by failing to provide prior written notice of its failure to assess. Issue Three spans September 2010 through September 2011, and alleges various denials of procedural rights and denials of FAPE arising out of Student's exit from special education, placement, and discipline. Issue Eight alleges that from March 2011 to the present, although District has agreed to provide a corrected IEP, it has failed to do so, and that this amounts to a procedural violation resulting in a denial of FAPE. In contrast, Issue Two clearly pre-dates June 10, 2011, in its entirety, as it deals solely with the 2008-2009 school year. Finally, certain issues are ambiguous as to the dates they encompass, for example Issues Four, Five, Six and Seven appear to relate to actions or inactions entirely prior to or within the 2010-2011 school year, but do not explicitly so state.

On June 24, 2011, District filed a Motion to Dismiss the complaint in its entirety, arguing that in a June 10, 2011, Settlement Agreement and General Release, Student released all claims against District through the date of execution. A copy of the Settlement Agreement was attached to District's Motion to Dismiss. As explained below, the Motion to Dismiss is granted as to allegations pre-dating the June 10, 2011 date of execution of the Settlement Agreement.

On June 27, 2011, District filed a Response to the complaint that contained another Motion to Dismiss. The June 27, 2011, Motion to Dismiss sought to dismiss allegations outside the two-year statute of limitations. As explained below, since the complaint is

dismissed regarding allegations that pre-date June 10, 2011, the Motion to Dismiss allegations before the two-year statute of limitations is moot.

APPLICABLE LAW

Parents or public agencies involved in educational decisions about a pupil 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).)

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 that should be addressed, not by OAH, but 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

The June 10, 2011, Settlement Agreement contained a broadly-worded and unambiguous General Release pursuant to which Student and District fully released and discharged each other from all claims, damages, liabilities, rights and complaints of whatever kind or nature arising from or related to Student’s educational program, known or unknown, through and including the date of execution.

Pursuant to the authority discussed above, where a settlement agreement is at issue, OAH nevertheless has jurisdiction over claims that either (1) allege breach of the settlement agreement amounting to a denial of FAPE, or (2) are otherwise not subject to the language of the release.

Here, Issue Eight alleges, in part, a procedural denial of FAPE arising out of District's alleged breach of one of the terms of the settlement agreement to provide Student with a corrected IEP. Pursuant to the authority cited above, if a breach of a settlement agreement amounts to a denial of FAPE, such denial is within OAH's jurisdiction. Therefore to the extent that Issue Eight alleges a denial of FAPE arising out of a breach of the settlement agreement, it is not dismissed.

Here too, the express release language of the settlement agreement, which is presumed valid, does not bar claims that arose after the June 10, 2011, date of execution. Accordingly, because the complaint contains allegations that post-date June 10, 2011, the complaint is not dismissed in its entirety. Therefore, District's Motion to Dismiss Student's complaint is denied as to all allegations arising after June 10, 2011, and is granted as to all allegations arising prior to June 10, 2011. Due to this dismissal, District's June 27, 2011, Motion to Dismiss allegations outside the two year statute of limitations is moot.

ORDER

1. District's motion to dismiss is granted in part as to all allegations arising prior to June 10, 2011.

2. District's motion to dismiss is denied in part as to all allegations arising after June 10, 2011.

Dated: July 08, 2011

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings