

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OCEANSIDE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2011120626

ORDER DENYING MOTION TO
DISMISS

On December 20, 2011, Student filed a Request for Mediation and Due Process Hearing (complaint), naming District as the respondent. On January 10, 2012, District filed a motion to dismiss the complaint, attaching an unauthenticated copy of an October 17, 2011 final settlement agreement arising out of a prior due process complaint. OAH has not received a response to the motion from Student. For the reasons discussed below, the motion is denied.

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 (FAPE) 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*].) 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.* (D. Cal. 2007) 2007 WL 949603, 5, the United States District Court for the Northern District of California held that

OAH has jurisdiction to adjudicate claims alleging denial of a FAPE 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. The court emphasized that the IDEA requires that all of the administrative procedures set forth in 20 USC § 1415 must be exhausted before filing a civil action in federal court. (*Id.* at p. 949605; also see 20 USC § 1415(l).)

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’s complaint raises a single issue against District. Student alleges that District denied Student a FAPE by providing a means of transportation for Student that requires Student to be on a District school bus for unreasonable amounts of time during each school day.

District and Student entered into a final settlement agreement (FSA) during a due process resolution session on October 17, 2011, wherein the parties agreed that Student would be privately placed by parents at a private school for the 2011-12 regular school year, thereby absolving District of the responsibility to provide Student with an educational program under the IDEA; that District would pay for tuition and would provide round trip transportation for the 2011-12 school year; and that parents agreed to waive all claims against the District through the end of the 2011-12 school year. The FSA is silent as to the mode of transportation, or as to how many hours Student would be on a school bus each day. Student filed a compliance complaint with the California Department of Education (CDE) in December 2011, asserting that District’s implementation of the transportation portion inappropriately required Student to be on a school bus for five hours a day, thereby denying him a FAPE. CDE rejected the complaint on the grounds that it had no jurisdiction to resolve the matter and referred it to due process. This complaint followed.

District, in its Motion to Dismiss, requests that OAH dismiss Student’s complaint because Student waived and released all claims against the District as of the date of the FSA. District also argues that OAH has no jurisdiction over Student’s claim because Student is a

privately placed Student and therefore District has no obligation to provide a FAPE under 34 C.F.R. §300.137 (2006 ed.) and the FSA. However, Student is not seeking an order enforcing the FSA, as District argues. Instead, Student's claim is that District's method of transportation, a related service that District *expressly agreed* to provide Student under the FSA, constituted a denial of a FAPE. District's argument that, by accepting private-student status Student effectively waived the right to claim in a due process hearing that District denied him a FAPE, is not persuasive.

Student's complaint alleges a denial of FAPE as a result of a violation of the FSA, and raises claims "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." Therefore, as discussed above, OAH has jurisdiction over Student's claim on its face. The determination of whether or not District denied Student a FAPE, and for that matter, the scope of the settlement agreement as a defense, must be made only after the parties have had the opportunity to present evidence to the hearing officer and not in a motion to dismiss. Therefore, District's motion must be denied.

ORDER

District's motion to dismiss is denied. All dates shall remain as scheduled unless otherwise ordered.

Dated: January 19, 2012

/s/

ADRIENNE L. KRIKORIAN
Administrative Law Judge
Office of Administrative Hearings