

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENTS ON BEHALF OF STUDENT,

OAH CASE NO. 2012020135

v.

REDLANDS UNIFIED SCHOOL DISTRICT
AND EAST VALLEY SPECIAL
EDUCATION SPECIAL EDUCATION
LOCAL PLANNING AREA,

REDLANDS UNIFIED SCHOOL
DISTRICT,

OAH CASE NO. 2012010847

v.

ORDER DENYING MOTION TO
DISMISS

PARENTS ON BEHALF OF STUDENT.

On February 6, 2012, Student filed a complaint against the Redlands Unified School District (District) and East Valley Special Education Local Planning Area (SELPA), in Office of Administrative Hearings (OAH) case number 2011111030 (Student's complaint). On February 10, 2012, OAH granted Student's motion to consolidate this matter and OAH Case number 2012020135.

On February 7, 2012, the District and SELPA filed a Motion to Dismiss that sought to limit Student's claims related to assessment information, or the lack thereof, to the period of February 16, 2010 to September 10, 2010, based on the parties' May 12, 2011 Interim Agreement (Interim Agreement) and October 6, 2011 Addendum to the Interim Agreement (Addendum) that fully resolved the District's prior action against Student, OAH case number 2011030315, and partially resolved Student's prior case against the District and SELPA, OAH case number 2011030687. On February 10, 2012, Student filed an opposition. The District and SELPA submitted a reply on February 13, 2012.

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*].)

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

In the present matter, the District asserts that language in the Interim Agreement and Addendum limits Student’s claims related to assessment information, or lack thereof, to reimbursement and compensatory claims for the period of February 16, 2010 through September 10, 2010. Student contends that the agreements only resolved Student’s requests for independent education evaluations (IEE’s) and that Student could not request District assessments or IEEs for claims related to the District’s purported denial of a free appropriate public education in its September 10, 2010 and October 24, 2011 individualized education programs (IEP’s). A reading of the Interim Agreement and Addendum supports Student’s position.

The Interim Agreement resolved the issue whether Student was entitled to IEEs in both parties’ prior complaints as the District agreed to provide IEEs. In the Interim Agreement, Student reserved his claims for reimbursement and compensatory education related to the District’s alleged failure to appropriately assess or administer timely assessments before the September 10, 2010 IEP team meeting. The Interim Agreement also provided that the IEEs were to be presented at a later IEP team meeting, where the District would make an IEP offer, and that Student could amend his prior complaint to include allegations related solely to that IEP.

Because an independent assessor could not attend the September 2011 annual IEP team meeting, the parties entered into the Addendum, which incorporated the Interim Agreement. The Addendum provided that Student would dismiss without prejudice his prior complaint and that the statute of limitations was tolled as to issues raised in that complaint. The Addendum reiterated Student’s right to seek reimbursement and compensatory education

related to the District's alleged failure to appropriately assess or administer timely assessments before the September 10, 2010 IEP team meeting. The Addendum permitted Student to file a due process hearing request on issues related to the 2011 annual IEP team meeting, now scheduled for October 24, 2011, and that Student waived procedural claims related to the timeliness of this annual IEP team meeting. Finally, the important language as to the District's and SELPA's contention is "Furthermore, the Family may not file with regard to any and all issues related to assessments performed by the District and the SELPA, including any and all requests for IEEs raised in Student's OAH Case in accordance with the terms of the Interim Agreement." (Addendum, ¶ 3a., pp. 1-2.)

Reading the Interim Agreement and Addendum together, Student did not waive claims related assessment information after the September 10, 2010 IEP because of language in the Interim Agreement that Student could amend his prior complaint to include allegations related to the 2011 annual IEP team meeting. Neither the Interim Agreement nor Addendum limited Student's ability to use District assessment data, or lack of data, to claims that occurred on or before September 10, 2010. The Addendum merely prevented Student from raising issues barred by the Interim Agreement as to the prior Student complaint from being raised in a subsequent complaint as to the October 24, 2011 IEP. Student did not raise any of these prohibited claims in his challenge to the October 24, 2011 IEP. Accordingly, the District's and the SELPA's motion to limit Student's claims related to assessment information, or the lack thereof, to the period of February 16, 2010 to September 10, 2010 is denied.

ORDER

The District's and SELPA's Motion to Dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: February 13, 2012

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings