

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

SAN LUIS COASTAL UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012050369

ORDER GRANTING MOTION TO
DISMISS COMPLAINT

On May 7, 2012, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH) against the San Luis Coastal Unified School District (District). On May 22, 2012, The District filed a Motion to Dismiss, which asserted that Student’s claims are, in part barred by the parties’ previous settlement agreement and in part, barred by the two-year statute of limitation. On May 24, 2012, Student filed an opposition.

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. (*Id.* at p. 1030.) 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.* (N.D. Cal. 2007) 2007 WL 949603 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 (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. Additionally, OAH does not have the authority to void or modify the parties’ previous agreements. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, *5.)

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.)

The statute of limitations for due process complaints in California is two years, consistent with federal law. (Ed. Code, § 56505, subd. (l); see also 20 U.S.C. §1415(f)(3)(C).) Title 20 United States Code section 1415(f)(3)(D) and Education Code section 56505, subdivision (l), establish exceptions to the statute of limitations in cases in which the parent was prevented from filing a request for due process due to specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint, or the local education agency’s withholding of information from the parent that was required to be provided to the parent. Student has not alleged that any exception applies in this case, and as such, Student’s issues must be limited to the two-year statute of limitations.

DISCUSSION

In this case, Student raises a total of seven sub-issues grouped into four issues for hearing. In the first part of Student’s Issue One, Student asserts that the District failed to provide him “with speech and language services using the appropriate level and instructional type, frequency and duration”, so he can access his education and be provided with a FAPE. The second part of Student’s Issue One alleges that District failed to consider Parents’ school-based speech and language assessments and information, and recommendations from

two assessors in developing Student's appropriate speech and language services, and the frequency and duration of the services in order for Student to receive a FAPE. The supporting facts included in Student's complaint show that "the last three years" is the relevant time period involved in these allegations.

The first part of Student's Issue Two Student alleges that the District failed to include Dr. Randy Ball, who recently completed a functional analysis assessment (FAA) in February 2012, in Student's individualized educational program (IEP) team meeting held on April 24, 2012, and thus denied him a FAPE. In the second part of Student's Issue Two, Student alleges that District failed to properly consider Dr. Ball's FAA and his recommendations that a behavioral support plan (BSP) should be developed for Student, and whether such failure is a denial of FAPE to Student.

Student's Issue Three alleges that District improperly failed to provide him curb-to-curb bus service during the 2011-2012 school year (SY), and thus was denied a FAPE.

Lastly, in Student's Issue Four, in the first part, Student raises the issue of whether District denied Student a FAPE because District failed to include Parents' verbal and written concerns, and conditional consent, provided at the November 6, 2009, November 24, 2009 and April 20, 2010 IEP team meetings, which prevented Student from receiving appropriate speech and language services during the relevant periods. The second part of Student fourth issue raises a similar question of whether District implemented a draft November 6, 2009 IEP without consideration of Parents' verbal and written input during the IEP team meetings of November 6, 2009, November 24, 2009 and April 20, 2010.

The District contends that the parties' May 17, 2011 settlement agreement bars most of Student's claims as Parents waived all claims through June 14, 2012. District has provided a copy of the settlement agreement to OAH. District further argues that the statute of limitation bars all of Student's claims based on any allegations of a violation that occurred outside the two-year statute of limitation.

The May 17, 2011 settlement agreement clearly states that it "constitutes a full and final resolution of all educational claims and issues ... arising from or related to Student's educational program through the effective date and until June 14, 2012" that Student had or has against District. Further, the agreement specifically provides that in lieu of the October 29, 2010, November 18, 2010, January 12, 2011 and May 12, 2011 disputed IEP's, Parents have "elected for Student to receive the placement and services" detailed in the settlement agreement, "from the effective date through June 14, 2012." Thus, pursuant to the express terms of the settlement agreement, Parents waived all educational claims against the District from the effective date of the agreement¹ and through June 14, 2012. All of Student's claims

¹ The effective date of the agreement is the "fourth business day after full execution" of the agreement by the parties.

raised in the complaint concern the time period prior to June 14, 2012, and covered by the settlement agreement. Accordingly, all of Student's claims are dismissed.²

ORDER

1. The District's Motion to Dismiss is granted.
2. Student's complaint is dismissed.

Dated: May 24, 2012

/s/

ADENIYI AYOADE
Administrative Law Judge
Office of Administrative Hearings

² Because Student's claims are barred by the settlement agreement, OAH need not reach the issue of whether the statute of limitations applies to Student's claims.