

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

DOWNEY UNIFIED SCHOOL DISTRICT.

OAH CASE NO. 2013090741

ORDER GRANTING IN PART AND
DENYING IN PART MOTION TO
DISMISS

On November 4, 2013, Parents and Student (collectively, Student) filed a first amended complaint for due process (Complaint), naming Downey Unified School District (District) as the respondent.

On December 12, 2013, District filed a motion (Motion) to dismiss and/or motion to strike parts of Student’s first amended complaint (Complaint). On December 16, 2013, Student filed an opposition. On December 18, 2013, District filed a response to the opposition.

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.) (*Wyner.*)

This limited jurisdiction does not include jurisdiction to entertain or resolve other claims such as, for example, those based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) (Section 504); the Americans with Disabilities Act of 1990 (42

U.S.C. § 12132) (ADA); the Unruh Act; the state and federal constitutions; and other civil rights statutes that are not based upon the IDEA.

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, however, in *Pedraza v. Alameda Unified Sch. Dist.* (D. Cal. 2007) 2007 U.S. Dist. LEXIS 2654, 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.

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 alleges four main "Proposed Issues," and three main "Problems." (The Complaint also includes allegations regarding requested remedies, which are separately stated as a fifth "Proposed Issue" and a fourth "Problem," but these allegations do not need to be separately discussed for the purposes of ruling on this Motion.) The Complaint structure is confusing, because it is unclear as to how the four "Proposed Issues"

relate to the three “Problems,” and why the “Proposed Issues are stated separately from the “Problems.” Essentially, however, the Complaint raises the following issues: (1) Whether the District deprived Student of a FAPE by failing to meet its child find obligations and provide Student an appropriate special education program during the 2012-2013 school year; (2) Whether the District denied Student a FAPE during the 2013-2014 school year by failing to assess Student after Student requested an assessment in June 2013; (3) Whether District deprived Student of a FAPE under Section 504 by failing to provide Student the services to which he was entitled under his Section 504 Plan; (4) Whether District denied Student a FAPE by failing to provide Student with the services agreed to in the July 12, 2012, mediated settlement agreement that the parties entered into to resolve a previous special education due process complaint Student had filed with OAH; (5) Whether District denied Student his civil rights under the Unruh Civil Rights Act; California Education Code, sections 200, 201, 262.3, and 32261; the due process and equal protection clauses of the federal and state Constitutions; and Title II of the Americans with Disabilities Act, at all times since the start of the 2012-2013 school year.

District’s Motion contends that the settlement agreement provided for a 504 Plan, and that OAH does not have jurisdiction over 504 Plans, or other civil rights statutes other than the IDEA. District’s motion also asserts that OAH does not have jurisdiction to enforce settlement agreements or claims barred by a settlement agreement, and that the settlement agreement, by its terms, deprives OAH of the jurisdiction to enforce the agreement. The Motion also contends that Student waived all claims up to and including the July 19, 2012, date of execution of the settlement agreement and, in particular, waived all claims that Student is eligible for special education and related services under the IDEA until June 31, (sic) 2013. District’s motion also contends that OAH does not have jurisdiction over the child find allegations of the Complaint, because those claims are premature, as District has not refused to assess Student.

Student contends that OAH has jurisdiction because the agreement settled a case filed under the IDEA and the California Education Code, and the Complaint alleges that District’s failure to implement the settlement agreement deprived Student of a FAPE under the IDEA.. Student also contends that he submitted the issue of enforcement of the settlement agreement to the U.S. Office for Civil Rights (OCR), and OCR sent Student a letter advising that OAH was the appropriate forum for resolving that issue. Student also contends that District has an obligation to provide Student a FAPE regardless of the waivers in the settlement agreement, and that OAH has jurisdiction over the child find issues alleged in the Complaint, regardless of whether the District has yet performed its assessments. Finally, Student acknowledges that the allegations in the Complaint that precede the July 19, 2012, date of execution of the settlement agreement were included only to inform OAH of what had occurred, and that Student cannot seek relief under those allegations pursuant to the waivers in the settlement agreement.

A copy of the settlement agreement is attached to District’s Motion. Student acknowledges in his Complaint, and in his opposition to the Motion, that the parties entered into the settlement agreement.

Student's Section 504 and Civil Rights Claims

First, to the extent that the Complaint alleges violations of Section 504, the Unruh Civil Rights Act, violations of the state and federal Constitutions, and other civil rights violations besides violations of the IDEA, OAH has no jurisdiction over any such claims. Therefore, the Motion is granted as to these claims, and all of Student's based upon issues other than IDEA issues and remedies available under the IDEA are dismissed.

Second, to the extent the Complaint claims that District has not implemented the section 504 Plan which is provided for in the settlement agreement, the Motion is granted and all such claims are dismissed. Just as OAH does not have jurisdiction over violations of Section 504, OAH does not have jurisdiction to enforce the implementation of section 504 Plans. This analysis does not change by reason of *Pedraza, supra*, and Student's allegation that District's failure to implement the Section 504 Plan constituted a breach of the settlement agreement and a deprivation of FAPE. *Pedraza, supra*, is distinguishable from the case at hand in several respects. *Pedraza* did not involve a settlement agreement that provided for a 504 Plan. Rather, *Pedraza* involved a settlement agreement for a child whose eligibility for special education placement and related services was undisputed. As such, the settlement agreement in *Pedraza* not only provided for services under the IDEA, but also specifically acknowledged that the services provided under the agreement constituted a FAPE under the IDEA. Here, the settlement agreement does not provide that Student is eligible for special education and related services under the IDEA. Indeed, District has never agreed that Student is eligible for special education and related services, and that dispute has been a topic of both the previous due process action which was settled by the subject settlement agreement, as well as of the current Complaint. Further, the settlement agreement does not provide for any placement or services based upon the IDEA, and the settlement agreement does not provide that any placement or services agreed to therein constitute a FAPE under the IDEA. Student cites no legal authority that the fact that the Student's section 504 Plan was entered into as a result of a mediation in a special education due process proceeding changes the principle that OAH has no jurisdiction over Section 504 issues. Student cites no legal authority that OAH has jurisdiction over the breach of such a settlement agreement simply because the Complaint alleges that the breach of the agreement constitutes a denial of a FAPE under the IDEA. Indeed, since the settlement agreement does not acknowledge that Student is eligible for placement and services under the IDEA, and is thereby entitled to a FAPE under the IDEA, an allegation that a breach of such an agreement constitutes a denial of a FAPE arguably fails to state any claim whatsoever.

The letter from OCR advising Student to pursue his claim for breach of the settlement agreement does not change this analysis. First, there was no evidence or any indication as to what information OCR was given that led it to conclude that OAH had jurisdiction over Student's claim that District breached the settlement agreement by its failure to implement the 504 Plan agreed to therein. Second, Student presented no authority that OCR can unilaterally, by means of a one-page letter which was not directed to OAH, expand OAH's

limited statutory jurisdiction as prescribed by statutes, the courts, and OAH's contract with the California Department of Education.

Finally, the settlement agreement unambiguously provides: "The Parties agree that the Office of Administrative Hearings. . .shall not have jurisdiction to enforce this Agreement."

Under all of these circumstances, District's Motion with respect to what has been identified in this Order as Issues Three, Four, and Five, is granted. All of Student's claims for relief based upon allegations that District breached or did not implement the settlement agreement because the District did not implement the 504 Plan are dismissed, as are the various civil rights claims.

Student's Claims That District Denied Student a FAPE by Failing to Perform its Child Find Obligations During the 2012-2013 school year, and by Failing to Assess Student In Response to His June 2013 Request

Whether Student's claim that the District deprived Student a FAPE by failing to perform its child find obligations during the 2012-2013 school year is barred by the various waivers in the settlement agreement requires an interpretation of these waiver clauses, and the circumstances surrounding the execution of the agreement. (*Y.G. v. Riverside Unified School District* (C.D. Cal., 2011) 774 F. Supp. 2d 1055, 1065.) These are questions of fact, which must be determined at hearing. Special education law does not provide for a summary judgment or summary adjudication procedure by which a party can demonstrate that there is no issue of fact and that the issue is purely one of law. Consequently, District's Motion is denied with respect to Student's claim that the District deprived Student of a FAPE by failing to meet its child find obligations and provide Student an appropriate special education program during the 2012-2013 school year. The matter will proceed to hearing on this claim, identified as Issue One in this Order.

The Motion is also denied regarding Student's claim that District has deprived Student of a FAPE by failing to assess Student in response to Student's request in June 2013. District contends that it has agreed to assess Student, and thus this claim is premature. On the face of the Complaint, this claim falls within the limited jurisdiction of OAH, as prescribed by title 20 United States Code section 1415(b)(6); and Education Code section 56501, subdivision (a), discussed above. Whether the claim is premature involves questions of fact, including the circumstances surrounding Student's request for assessment and the District's response thereto. Such questions of fact must be resolved in an evidentiary hearing.

As was stated above, special education law does not provide for a summary judgment or summary adjudication procedure. Therefore, the matter will proceed to hearing on this claim, identified as Issue Two in this Order.

IT IS SO ORDERED.

Dated: January 10, 2014

/s/

ELSA H. JONES
Administrative Law Judge
Office of Administrative Hearings