

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

REDLANDS UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2013110303

ORDER GRANTING MOTION TO  
DISMISS, IN PART

On November 07, 2013, attorney Michelle Ortega filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student (Student) naming Redlands Unified School District (District) as the respondent.

On November 19, 2013, attorney Vivian Billups filed on behalf of District a motion to dismiss. On November 22, 2013, Student filed a response to District's motion.

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*].) 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 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 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 first 16 pages of the 22-page complaint details Student’s special education from when first found eligible in February 2010. On page 10, the complaint refers to a January 30, 2013 IEP, with which Student disagreed, listing a number of concerns with the IEP. The complaint proceeds to summarize placement for the remainder of the 2012-2013 school year, as well as the beginning of the 2013-2014 academic year. The complaint alleges a lack of aide support, safety concerns, improperly implemented physical therapy, alleged abuse, inadequate teaching and classroom structure, insufficient taking of data, and unsatisfactory iPad training. The complaint does not assert any IEP meetings since January 2013, does not indicate that anyone requested an IEP meeting, and does not claim that events and circumstances warranted the District to call an IEP meeting.

District’s motion asserts that the Complaint should be dismissed because Student and District entered into a settlement agreement on March 11, 2013, at which time Student released District and waived all claims up to the date of the agreement. As part of the agreement, the January 30, 2013 IEP was amended with updated goals and objectives. The parties also agreed that the trial occupational therapy (OT) was terminated, including goals and services, and that there was no need for any further IEP meetings to review the data collected as part of the trial OT. Further, the Student consented to the January 2013 IEP, as modified by the settlement agreement, and agreed that the IEP offered Student a free appropriate public education (FAPE), in the least restrictive environment (LRE).

Accordingly, the District argues that any allegations that the District’s current offer of placement and services are a denial of FAPE, in the LRE, must be dismissed as the parties expressly agreed that the amended January 2013 IEP was FAPE in the LRE. Further, since Student avers that District has not complied with the settlement agreement, District claims that OAH has no jurisdiction, citing the *Wyner* case, and requests dismissal.

In his response, Student claims that District has mischaracterized the Complaint. Student states that he does not seek any redress before the March 2013 settlement and, further, does not assert that the District has failed to comply with the settlement agreement. Student's response affirms that the amended January 2013 IEP, as amended by the March 2013 settlement agreement, provides a FAPE. Student states that his complaint claims he has been denied a FAPE because District has not implemented the amended January 2013 IEP. Therefore, OAH has jurisdiction and prays that District's motion to dismiss be denied.

Student is correct in that the complaint does not assert that District has failed to comply with the March 2013 settlement agreement and, thus, does not seek OAH's assistance in enforcing the agreement. In fact, the complaint makes no mention of the settlement agreement. Both parties agree that the settlement agreement amended the January 2013 IEP and, Student notes, the amended IEP is at issue herein, not the settlement agreement. Therefore, District's request for dismissal because OAH does not have jurisdiction to enforce settlement agreements is denied.

Both parties agree that Student acknowledged, in the March 2013 settlement agreement, that the amended January 2013 IEP provided FAPE. Student further affirmatively states in his reply that the January 2013 IEP, as amended by the March 2013 agreement, provided FAPE in the LRE. Student then claims that his complaint merely asserts that District has denied him a FAPE in the LRE because the District has failed to implement the amended January 2013 complaint. The language of the complaint, however, contradicts Student's assertion in this regard.

Issue A states that the District failed to offer an appropriate placement and supports in the LRE. On page 19, the Complaint states ". . . District failed to provide an appropriate placement in the LRE for Student." Yet, the placement offer is what was contained in the amended January 2013 IEP, which Student acknowledges provided FAPE in the LRE. Therefore, Issue A is claiming – at least in part – that the amended January 2013 IEP did not offer a FAPE in the LRE, not merely that District failed to implement the IEP.

Issue B reads that "District failed to use appropriate behavioral interventions," thus denying Student FAPE. It is unclear if Student is claiming that the behavioral interventions provided by the IEP were not appropriate or that the interventions of the IEP were not appropriately implemented. Therefore, as stated in the complaint, Issue B is claiming – at least in part – that the January 2013 IEP did not offer a FAPE in the LRE, not merely that District failed to implement the IEP.

Issue C states that the District failed to offer appropriate frequency, duration, and type of DIS services. On page 20, the complaint reads the Parents believe ". . . that his speech and language DIS are too low for him." The only DIS speech and language services are those provided by the January 2013 IEP, as amended. Therefore, as stated in the complaint, Issue C asserts that the January 2013 IEP did not provide a FAPE because the offered DIS services were inappropriate, not that District failed to implement the IEP.

Issue D claims that District failed to implement the Student's IEP, by not providing materials which the Student required to reach his goals. Namely, Student asserts that his iPad was not being used as stated in the IEP. This is the only issue which is unambiguously based upon the District's alleged failure to implement the IEP.

Contrary to Student's assertion in his opposition, the complaint's Issues A, B, and C include claims that the amended January 2013 IEP failed to offer a FAPE because of inappropriate offers of placement and related services. However, as acknowledged by Student, Student stipulated and agreed in the March 2013 settlement agreement that the January 2013 IEP, as amended, offered a FAPE in the LRE. Therefore, Student cannot assert that the January 2013 did not offer a FAPE. Accordingly, Issues A and B are dismissed to the extent that Student asserts therein that the January 2013 IEP, as amended, did not offer a FAPE in the LRE. Further, Issue C is dismissed in its entirety because it asserts that the January 2013 IEP did not offer a FAPE in the IEP because of District failure to offer appropriate speech and language related services.

#### ORDER

1. District's Motion to Dismiss Student's complaint, because the complaint seeks to have OAH enforce a settlement agreement, is denied.

2. District's Motion to Dismiss is granted as to the complaint's Issues A and B, to the extent that Student asserts therein that the January 2013 IEP, as amended, did not offer a FAPE in the LRE, such claim being barred by the March 2013 settlement agreement. To the extent that Issues A and B assert that Student was denied a FAPE because the District failed to implement the January 2013 IEP, as amended, District's motion to dismiss is denied.

3. District's Motion to Dismiss is granted as to the complaint's Issue C because it asserts that the January 2013 IEP, as amended, did not offer a FAPE because the IEP failed to offer appropriate speech and language related services, which is barred by the March 2013 settlement agreement.

4. District's Motion to Dismiss is denied as to the complaint's Issue D.

Dated: November 25, 2013

/s/

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CLIFFORD H. WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings