

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA MONICA-MALIBU UNIFIED
SCHOOL DISTRICT.

OAH CASE NO. 2014030154

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS

On March 28, 2014, the Santa Monica-Malibu Unified School District (District) filed a motion to dismiss Student's due process complaint on the grounds that Student's claims are barred by a November 21, 2013 final settlement agreement and release, entered into by the parties at resolution session. District asserts that the Office of Administrative Hearings therefore has no jurisdiction to hear this matter. District's motion is supported by a declaration under penalty of perjury and an authenticated copy of the settlement agreement. Student, who is represented in this matter by his Mother, did not file an opposition to the 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); see also Ed. Code, § 56501, subd. (a).) 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 [hereafter *Wyner*].)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D.Cal., Mar. 27, 2007, No. C 05-04977 VRW) 2007 U.S. Dist. Lexis 26541, the United States District Court for the Northern District of California held that when the Student is alleging a denial of FAPE as a result of a violation of a settlement agreement, and not merely a breach of the settlement agreement, OAH has jurisdiction to adjudicate claims alleging denial of a free appropriate public education. According to the court in *Pedraza*, issues involving merely a breach of the settlement agreement 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

On February 28, 2014, Student filed this request for due process hearing, contending that his individualized education program (IEP) fails to provide him with a free appropriate public education because he requires intensive interventions in a small group setting that can only be provided by a non-public school. Student states that his IEP team met on February 13, 2014, to discuss what he believed was his lack of progress at school. Student asked District to place him at a non-public school. District denied the request, after which Student filed his request for due process.

In his request for due process, Student does not contend that District denied him a free appropriate public education by failing to implement the settlement agreement. Student does not reference the November 21, 2013 settlement agreement between the parties at all in his request for due process.

The November 21, 2013 settlement agreement was entered into by the parties at the resolution session held pursuant to an earlier request for due process filed by Student in OAH case number 2013110134. District provided a copy of the parties' settlement agreement along with the declaration of Dr. Sara Woolverton, District's Director of Special Education. Dr. Woolverton's declaration authenticates the settlement agreement. Paragraph 10 of the agreement is a specific waiver of all past and prospective claims by Student, through the end of the regular 2013-2014 school year. The waiver includes all actual or potential violations by District concerning the offering or making available to Student of a free appropriate public education under the Individuals with Disabilities Education Act and applicable sections of the California Education Code.

In his present request for due process, Student contends that District has failed to offer him a free appropriate public education, at least as of February 13, 2014. However, paragraph 10 of the settlement agreement is a clear, unambiguous waiver of all prospective claims through the end of the regular 2013-2014 school year. Because Student has waived his claims by consenting to the settlement agreement, he cannot attempt to raise them through a new request for due process. Accordingly, District's motion to dismiss must be granted.

ORDER

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

DATE: April 10, 2014

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings