

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LONG BEACH UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2014030919

ORDER DENYING MOTION TO
DISMISS

On March 21, 2014, Student filed a Request for Mediation and Due Process Hearing (complaint), naming Long Beach Unified School District (LBUSD) as the respondent.

On March 28, 2014, District filed a Motion to dismiss the complaint on the grounds that OAH lacks jurisdiction over the claims raised in the complaint because: (1) the complaint concerns matters that were waived as part of a Settlement Agreement (Agreement) dated February 12, 2014, and (2) the complaint concerns matters that are not ripe for adjudication.

Specifically, District contends that the parties settled a prior due process complaint filed by Student in January 2014 identified as OAH Case No. 201401144. In that complaint Student claimed District's failure to timely provide assessments and convene an individualized educational program (IEP) meeting denied Student a free appropriate public education (FAPE). As part of that Agreement Parent agreed to (1) consent to implement an IEP dated January 22, 2014, (2) waive timelines for the completion of independent assessments and review of the assessments at an IEP meeting, and (3) waive all claims for any and all actual or potential violations by District concerning assessments and the offering or making available of a FAPE through and including the date before the IEP meeting referenced in the Agreement. No date for the IEP meeting is specified in the Agreement.

OAH has not received a response from Student. However, based upon the analysis below, the motion is denied.

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 sole claim raised in Student's complaint is that Student requires home to school transportation and District denied Student a FAPE by removing home to school transportation from Student's IEP and providing in its place school to school transportation. Student requests District provide home to school transportation. While Student does not specifically identify the IEP in dispute, the reference is to the January 22, 2014 IEP to which parents consented in the Agreement. A copy of the settlement agreement is attached to District's Motion to Dismiss.

OAH has jurisdiction to entertain Student's claim because it is not clear that Student has waived the claim asserted in the complaint. Moreover, under *Pedraza* even if the claim may have been resolved as part of the Agreement, the claim that Student requires home to school transportation which was not provided in the IEP can be construed as a claim alleging a denial of FAPE. Even attempting an interpretation of the Agreement, the plain language of the Agreement does not resolve the claim raised in the complaint. Further, the Declaration of Angela Suttles, that under the terms of the Agreement the parents consented to the January 22, 2014 IEP which provided for "pick up station" transportation, does not support District's motion.

ORDER

1. District's Motion to Dismiss is denied.
2. The matter shall proceed as scheduled.

DATE: April 04, 2014

/s/

STELLA OWENS-MURRELL
Administrative Law Judge
Office of Administrative Hearings