

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. 2014040858

ORDER GRANTING DISTRICT'S
MOTION TO DISMISS ISSUES 9, 10,
AND 11 OF STUDENT'S COMPLAINT

On May 2, 2014, the Long Beach Unified School District (District) filed a motion to dismiss Parent on behalf of Student's (Student) due process complaint issues nine, 10, and 11, on the grounds that Student's claims are barred by a May 16, 2013 settlement agreement (Agreement). District's motion is supported by a declaration under penalty of perjury and an authenticated copy of the Agreement. Student filed 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.* (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 (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.)

DISCUSSION

Student alleges in issues nine, 10 and 11 of his complaint that District's April 17, 2013 Individualized Education Program (IEP) denied him a FAPE by failing to offer services and goals in the areas of behavior, social skills, and speech and language.

The May 16, 2013 Agreement related to a due process hearing filed by Student (the first case). Paragraph two, third bullet point, of the Agreement defined as the specified time period the time period through an IEP held in September 2013. Per paragraph two, second bullet point, Student agreed to the following:

IEP: Parents will sign the April 17, 2013 IEP and consent to its implementation of placement and services. Parents further agree to waive any denial of FAPE allegations to supports, services, goals, and objectives contained in the April 17, 2013 IEP, during the entire statutory period wherein the IEP falls. The waiver specifically excludes the right to bring a claim for failure to implement the April 17, 2013 IEP.

Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain Student's complaint, because the plain language of the Agreement releases the claims stated therein. Student's opposition argues that a waiver for unknown claims, a "Section 1542" waiver, was required to release any claims that were not argued with particularity in Student's complaint for the first case. Student's argument is without merit as Student's issues nine, 10 and 11 of his present complaint, which allege a denial of FAPE based upon District's failure to offer various services and goals at the April 17, 2013 IEP, were waived pursuant to the plain language of the Agreement. Accordingly, District's motion is granted.

ORDER

District's Motion to Dismiss Student's issues nine, 10, and 11 of his complaint is granted.

IT IS SO ORDERED.

DATE: May 8, 2014

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings