

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

NEVADA JOINT UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2015060445

ORDER DENYING MOTION TO
DISMISS EXPEDITED HEARING

On June 10, 2015, Parent on behalf of Student filed a Request for Expedited Due Process Hearing with the Office of Administrative Hearings, naming the Nevada Joint Union High School District. On June 16, 2015, District filed a motion to dismiss. Student timely submitted an opposition to District's motion to dismiss.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to “ensure that all children with disabilities have available to them a free appropriate public education”, 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.)

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.)

Where the terms of an agreement are left for future determination and it is understood that the agreement is not to be deemed complete until they are settled or where it is understood that the agreement is incomplete until reduced to writing and signed by the parties, no contract results until this is done. (*Spinney v. Downing* (1895) 108 Cal. 666, 668.) Whether a writing constitutes a final agreement or merely an agreement to make an agreement depends primarily upon the intention of the parties. In the absence of ambiguity this must be determined by a construction of the instrument taken as a whole. (*Beck v. American Health Group International, Inc.* (1989) 211 Cal.App.3d 1555, 1562.) The objective intent as evidenced by the words of the instrument, not the parties' subjective intent, governs..." (*Ibid.*) Where the writing at issue shows "no more than an intent to further reduce the informal writing to a more formal one" the failure to follow it with a more formal writing does not negate the existence of the prior contract. (*Smissaert v. Chiodo* (1958) 163 Cal.App.2d 827, 831.) However, where the writing shows it was not intended to be binding until a formal written contract is executed, there is no contract. (*Banner Entertainment, Inc. v. Superior Court* (1998) 62 Cal.App.4th 348, 358.) The failure to reach a meeting of the minds on all material points prevents the formation of a contract even though the parties have orally agreed upon some of the terms, or have taken some action related to the contract. (*Ibid.*)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

DISCUSSION

On April 27, 2015, Student and District entered into a settlement agreement to resolve OAH case number 2015040374 (First Case). Amongst other issues, the settlement agreement resolved Student's dispute regarding District's March 3, 2015 manifestation determination review and related expulsion proceedings.

Following the settlement agreement, Student was suspended for an incident which was unrelated to the First Case. Subsequently, on June 8, 2015, District convened a manifestation determination review, which resulted in District, again, initiating expulsion proceedings against Student. On June 10, 2015, Student filed a request for an expedited due process hearing, the instant matter (Second Case), to dispute District's June 8, 2015 manifestation determination and to stay the expulsion proceedings.¹

In its motion to dismiss, District contends that the settlement agreement prevents Student from requesting a due process hearing in the Second Case. In his opposition, Student disputes the intent and interpretation of the settlement agreement in regard to expedited claims alleged in the Second Case.

Student's expedited claims are not facially outside of OAH's jurisdiction, and the extent and manner in which the settlement agreement impacts the expedited hearing requires an evidentiary hearing. Therefore, District's motion to dismiss is denied.²

ORDER

1. District's motion to dismiss is denied.
2. All dates currently set in this matter are confirmed.

DATE: June 19, 2015

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings

¹ Student is presently detained in juvenile hall. In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) It is not clear why District moved to discipline Student, which triggered the manifestation determination meeting, even though Student was and is still at juvenile hall. Consequently, either party can submit a motion to set aside a Decision by OAH until Student is released from juvenile hall.

² District may assert the settlement agreement as a defense in the expedited hearing, and may re-file a motion to dismiss issues precluded by the settlement agreement after the expedited hearing has concluded.