

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMIES.

OAH Case No. 2016021028

ORDER GRANTING MOTION FOR  
RECONSIDERATION AND  
GRANTING MOTION TO DISMISS

On March 15, 2016, the undersigned administrative law judge issued an order dismissing this matter for lack of jurisdiction, specifically because the claims raised in the complaint were requests to enforce and modify the terms of a settlement agreement and were barred by the release in the settlement agreement. On March 23, 2016, Student filed a motion for reconsideration of the dismissal on several grounds. Student asserts that, although there was a settlement agreement, OAH still has jurisdiction over Student's rights to a FAPE and that California Virtual Academies (CAVA) offered Student a FAPE in the settlement agreement and has failed to provide Student a FAPE. Student further asserts that CAVA breached the agreement and that the agreement was cancelled and voided by Parents.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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*].)

This limited jurisdiction does not include jurisdiction over claims alleging a school district's failure to comply with a settlement agreement. (*Id.* at p. 1030.) 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.)

In *Pedraza v. Alameda Unified Sch. Dist.* (N.D. Cal. 2007), No. C 05-04977 VRW 2007 WL 949603 (hereinafter *Pedraza*), the United States District Court for the Northern District of California recognized OAH's 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. In that case, the settlement agreement intended that the placement set forth in the terms of the agreement would provide Student with a FAPE.

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

### *Reconsideration*

Student alleges new facts and circumstances in support of his motion for reconsideration. Student now asserts the settlement agreement is void or cancelled and attaches a letter from Parent to CAVA dated December 20, 2015, in which Parent states he is

cancelling and voiding the settlement agreement based upon CAVA's breach of the agreement.<sup>1</sup> Accordingly, Student's request for reconsideration is granted.

*Dismissal*

Upon reconsideration, CAVA's motion to dismiss is granted. Student fails to submit adequate evidence that the settlement agreement is no longer legally binding on the parties. Furthermore, the claim that there is no valid settlement agreement contradicts the claims in Student's complaint which allege that CAVA failed to abide by the settlement agreement. Student's assertions that CAVA offered Student a FAPE in the settlement agreement and failed to provide Student a FAPE were considered in the initial ruling, and Student provides no new facts, circumstances or law to justify any change to that ruling. The terms of the settlement agreement show that CAVA terminated its ongoing obligation to provide a FAPE to Student. Accordingly, OAH does not have jurisdiction of the issues in Student's complaint.

ORDER

The Motion for Reconsideration is Granted. Upon reconsideration, the Motion to Dismiss is Granted. This matter is dismissed, and all dates are vacated.

IT IS SO ORDERED.

DATE: March 25, 2016

DocuSigned by:

*Lisa Lunsford*

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LISA LUNSFORD

Administrative Law Judge

Office of Administrative Hearings

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<sup>1</sup> This letter is not accompanied by a sworn declaration.