

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 TO
DISMISS

On February 24, 2016, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings, naming California Virtual Academies (CAVA).

On March 9, 2016, CAVA filed a Motion to Dismiss Student's Due Process Complaint. CAVA asserts that the complaint should be dismissed because it alleges violations of a settlement agreement, and OAH lacks jurisdiction to enforce settlement agreements. CAVA further asserts that Student's claims were waived in the settlement agreement and that CAVA has no ongoing obligation to provide Student a FAPE since Student withdrew from CAVA as part of the settlement agreement. Finally, CAVA argues that, should OAH determine it has jurisdiction, Student's claim that CAVA failed to provide services is not ripe because the settlement agreement allowed for the provision of services through April 30, 2016.

On March 9, 2016, Student filed an opposition to the motion to dismiss. Student asserts that CAVA was responsible for executing the settlement agreement, and CAVA has breached the settlement agreement by failing to carry out the terms of the agreement. Student describes Parents' attempts to contact CAVA about the services, which the settlement agreement identified would be provided through a non-public agency, and alleges that CAVA failed to provide Student's educational records to the non-public agency which delayed the services. Student also states that CAVA wrongfully withheld all educational services and claimed they do not provide independent study programs for students with home hospital orders, yet CAVA accepted Student's home hospital orders on more than three occasions.

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*].)

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

Student raises three claims against CAVA in his Complaint, as follows: (1) CAVA is in both violation and breach of the November 17, 2015 settlement agreement¹ because Student has not received all of the instruction and services included in the agreement; (2) CAVA's negligent delay in providing Student's educational records to Professional Tutors of America caused a delay in Student's ability to receive the services provided for in the settlement agreement; and (3) CAVA was aware Student had a home hospital order when he was enrolled at CAVA and failed to provide services to Student.

CAVA, in its Motion to Dismiss, requests that Student's Complaint be dismissed because: (1) OAH lacks jurisdiction to enforce settlement agreements; (2) Student released all claims against CAVA as of the date of the fully executed agreement, dated November 17, 2015; (3) CAVA has no ongoing obligation to provide a FAPE to Student since Student is withdrawn from CAVA; and (4) claims concerning the services in the settlement agreement are not ripe because, per the agreement's terms, the services are to be provided through April 30, 2016. A copy of the settlement agreement is attached to CAVA's Motion to Dismiss.

The terms of the settlement agreement call for CAVA to fund compensatory services through Professional Tutors of America (PTA), and the services shall be used on or before April 30, 2016. Student's Issue One claims that Student has not received all of these services, and Issue Two claims that CAVA's failure to provide Student's records to PTA delayed these services. Issues One and Two directly challenge CAVA's performance of the settlement agreement terms and are therefore an attempt to enforce the settlement agreement. Student's proposed resolutions for Issues One and Two include enforcing the agreement by requiring CAVA to provide the services and modifying the agreement to extend the expiration date of these services. Pursuant to the authority discussed above, OAH does not have jurisdiction to entertain these two claims and their proposed resolutions.

To the extent Student is alleging that CAVA's breach of the agreement is a denial of FAPE,² Student fails to establish that any of the terms of the agreement were specifically required to provide a FAPE to Student and therefore that CAVA's failures, beyond failing to comply with the settlement agreement, caused a denial of FAPE. The evidence does not show that the intent of the agreement was to offer a FAPE to Student prospectively. The settlement agreement provides for reimbursement, compensatory services, a release of all claims against CAVA through the date of execution, the withdrawal of Student from CAVA,

¹ Student's Complaint refers to a settlement agreement signed on November 15, 2015. The settlement agreement, which is attached to CAVA's Motion to Dismiss and supported by Kimberly Odom's declaration, was actually executed on November 17, 2015, and Student does not dispute the accuracy of the attached agreement.

² It is unclear whether Student claims the breach represents a denial of FAPE. Issue One states that the "School is in both Violation and Breach of the agreement for special education services to the child as required under the FAPE and IDEA."

and an agreement that Student shall not seek to enroll in CAVA at any time in the future. These terms establish that CAVA terminated its ongoing obligation to provide Student with a FAPE.³ Therefore, the limited *Pedraza* exception does not apply in this case.

Student's Issue Three claims that CAVA failed to provide services to Student despite CAVA's knowledge and acceptance of Student's home hospital order when enrolled with CAVA. This claim concerns CAVA's alleged failure to provide services while Student was enrolled at CAVA, which was prior to the settlement agreement. The settlement agreement provides for Student's withdrawal from CAVA and shows that Student released and discharged all claims against CAVA through the date of execution of the agreement. Because the plain language of the release in the settlement agreement bars all claims related to the time period prior to and up through its execution, OAH is without jurisdiction to entertain the claim.

ORDER

CAVA's motion to dismiss is GRANTED, and OAH Case No. 2016021028 is dismissed. All dates are hereby vacated.

IT IS SO ORDERED.

DATE: March 15, 2016

DocuSigned by:

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LISA LUNSFORD
Administrative Law Judge
Office of Administrative Hearings

³ No determination is made in this order as to the legality of the clauses in the settlement agreement mandating Student's withdrawal from CAVA or the prohibition against future enrollment in CAVA, a public charter school.