BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENTS ON BEHALF OF STUDENT, v. OCEAN VIEW ELEMENTARY SCHOOL DISTRICT.	OAH CASE NO. 2010101079 ORDER GRANTING IN PART MOTION TO DISMISS

On October 22, 2010, Student filed a Request for Due Process Hearing against the Ocean View Elementary School District (District). On November 1, 2010, the District filed a motion to dismiss to dismiss Issue One in Student's complaint, and any claim that occurred on or before May 17, 2010 in the other issues. On November 2, 2010, Student filed a response that agreed to dismiss Issue One, but objected to a blanket dismissal of claims that occurred before May 17, 2010. The District filed a reply brief on November 2, 2010.

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 [FAPE] 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.)

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 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.) 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 District seeks to dismiss Issue One and all claims against the District that occurred through May 17, 2010, in Issues Two and Three, due to language in the parties' July 31, 2009 settlement agreement (Agreement). Student concedes that the Agreement bars Issue One. However, Student objects to the dismissal of all claims through May 17, 2010, that relate to the District's offer of services and placement to be implemented after May 17, 2010. At issue are Student's claims against the District regarding the February 26, 2010 and May 17, 2010 individualized education programs (IEPs) in which the District made an offer of services and placement for after May 17, 2010.

The Agreement established Student's educational program through May 17, 2010, and contained a waiver of claims regarding Student's educational program through that date. The District is correct that the Agreement bars Student's claims against the District regarding Student's educational program through May 17, 2010. However, a fair reading of the agreement does not bar claims against the District for purported violations that occurred before May 17, 2010, regarding the educational services Student was to receive after May 17, 2010. Otherwise, Student could not challenge the District's offer of services and placement after the expiration of the Agreement, simply because the District made its offer at the February 26, 2010 and May 17, 2010 IEPs. Accordingly, the District's motion to dismiss

Issue One is granted, but its motion to deny Student's claims that occurred before May 17, 2010, regarding Student's educational program after that date is denied.

ORDER

1. The District's motion to dismiss Issue One is granted.

2. The District's motion to dismiss all claims through May 17, 2010, is granted as to services that the District provided, or should have provided to Student through May 17, 2010. The District's motion is denied as to Student's claims before May 17, 2010, regarding the educational services that the District was to provide after May 17, 2010, for Student to receive a FAPE.

IT IS SO ORDERED.

Dated: November 3, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings