

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2012040042

ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
DISMISS

On April 2, 2012, Student filed a Request for Due Process Hearing (complaint) with the Office of Administrative Hearings (OAH) against the Riverside Unified School District (District). On April 5, 2012, The District filed a Motion to Dismiss, which asserted that Student's claims are barred by the parties' previous settlement agreement. On April 8, 2012, Student filed an opposition.

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).) The Office of Administrative Hearings (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.* (N.D. Cal. 2007) 2007 WL 949603 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. Additionally, OAH does not have the authority to void or modify the parties’ previous agreements. (*Y.G. v. Riverside Unified Sch. Dist.* (C.D. Cal. 2011) 2011 WL 791331, \*5.)

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

In this case, Student raises two issues for hearing. In the first issue, Student asserts that the District failed to assess Student in all areas from December 2009 through the March 9, 2012 individualized education program (IEP) team meeting. In the second issue, Student alleges that the District’s proposed placement in the March 9, 2012 IEP would not provide her with a FAPE because the other students in the proposed special day class are too low functioning. The District contends that the parties’ September 29, 2011 settlement agreement in OAH Case No. 2011081130 and March 15, 2012 Informal Dispute Resolution (IDR) agreement bars Student’s claims as Parents waived all claims through April 9, 2012.

Regarding Issue One, in the settlement agreement Parents waived all claims against the District through the finalization of the IEP, which IEP team meeting was then scheduled to be held by February 24, 2012.<sup>1</sup> The settlement agreement explicitly provided for the

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<sup>1</sup> The District could not hold the annual IEP team meeting before February 24, 2012, due to the unavailability of Student’s advocate, and therefore the parties’ agreed to postpone the annual IEP team meeting to March 9, 2012.

District to assess Student, and to hold an IEP team meeting to make an offer of services and placement. Accordingly, Student waived the claims alleged in Issue 1 because the claims relate to alleged violations that occurred before the finalization of the March 9, 2012 IEP.

As to Issue Two, the District claimed that Student waived all claims in the March 15, 2012 IDR through April 9, 2012. However, the IDR agreement only covered issues related to permitting Student continue to attend Woodcrest Elementary School (Woodcrest) through April 9, 2012, when he would then transfer into Mark Twain Elementary School. No language exists in the IDR agreement that Parents waived their right to challenge the District's March 9, 2012 IEP, only language as to possible FAPE violations while Student attended Woodcrest. Additionally, the settlement agreement only runs up to the finalization of February 24, 2012 IEP, which was extended to March 9, 2012, to permit Student's advocate to attend the IEP team meeting. Nothing in the settlement agreement prevents Student from challenging whether the March 9, 2012 IEP provided Student with a FAPE. Therefore, the District's motion to dismiss Issue 2 is denied because Student's challenge of the March 9, 2012 IEP is not barred by the settlement agreement or IDR.

#### ORDER

The District's Motion to Dismiss is granted as to Issue 1 and denied as to Issue 2. The matter will proceed as scheduled as to Issue 2.

Dated: April 23, 2012

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings