

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WESTMINSTER SCHOOL DISTRICT.

OAH CASE NO. 2013030236

ORDER GRANTING IN PART AND  
DENYING IN PART DISTRICT'S  
MOTION TO DISMISS

On March 06, 2013, Student filed a Request for Due Process Hearing (complaint), naming Westminster School District as the respondent.

On March 28, 2013, District filed a Motion to Dismiss. District moves to dismiss claims arising on or before June 15, 2012, on the grounds such claims are barred by a settlement agreement executed by the parties on July 25, 2011. A copy of the settlement agreement is attached to the declaration of District's Assistant Superintendent filed in support of the motion to dismiss.

On April 2, 2013, Student filed a response, in which Student moves to dismiss issues numbered 1 through 4 of his complaint, and opposes District's motion to dismiss issues numbered 5 through 8. A copy of an individualized education program (IEP) dated April 27, 2012, is attached to the declaration of Student's counsel filed in support of Student's opposition.

Issues numbered 1 through 4 of the complaint will be dismissed at the request of both parties. As explained below, District's motion to dismiss as to issues numbered 5 through 8 is denied.

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*].)

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.)

## DISCUSSION

The parties entered into a settlement agreement (Agreement) on July 25, 2011, in which the parties agreed to services and placement for the 2011-2012 school year. The Agreement provided that the next annual IEP team meeting was to be on a mutually agreeable date on or before April 30, 2012. The Agreement further provided:

4. Waiver of Remedy Regarding a Free Appropriate Public Education. In consideration of the agreements contained herein, the Parties agree that they will not file a due process request with the Office of Administrative Hearings or complaint with the California Department of Education regarding the educational placement, educational services, and/or provision of a Free Appropriate Public Education (FAPE) for [Student] including any and all issues regarding procedural requirements of the IDEA and analogous California law, from January 19, 2011 through June 15, 2012, unless the Student experiences a catastrophic change in circumstances and a dispute arises with respect to such issues.

An IEP team meeting was held, and District offered Student an IEP for the 2012-2013 school year, on April 27, 2012.

Issues 5 and 6 of Student's complaint alleged District failed to offer sufficient behavioral support in, and failed to implement, the April 27, 2012, IEP. Student argues that the Agreement resolved educational claims through June 15, 2012, as that was the end of the school year, but that the Agreement does not bar claims pertaining to the educational program offered by District for the following school year. District contends that claims arising from the April 27, 2012 IEP are barred by the Agreement.

The Agreement is susceptible to more than one interpretation. The Agreement could be interpreted to mean that the parties are barred from filing a due process request with OAH or a complaint with the Department of Education before June 12, 2012, which would not preclude filing a due process request after June 12, 2012, for matters within the statute of limitations. Alternatively, the Agreement could be interpreted to mean that the parties are barred from seeking a remedy for the denial of FAPE occurring on or before June 15, 2012, in which case Student might be barred from procedural claims regarding the April 27, 2012 IEP but not from the failure to implement an appropriate program for the 2012-2013 school year. Thus, the Agreement is susceptible to at least two reasonable interpretations. Accordingly, the Agreement is ambiguous. The extrinsic evidence submitted by Student does not resolve the ambiguity. Therefore, District's motion to dismiss as to issues 5 and 6 is denied and the issues must be resolved at hearing.

Issue number 7 alleged an addendum IEP dated September 18, 2012, failed to provide sufficient behavioral support for Student. Issue number 8 alleged an amendment IEP dated December 19, 2012, inappropriately eliminated all behavioral support for Student. Both of these issues arose after June 15, 2012. Accordingly, the motion to dismiss is denied as to issues 7 and 8.

### **ORDER**

1. Issues numbered 1 through 4 in Student's complaint are dismissed.
2. District's motion to dismiss as to all remaining issues is denied.

Dated: April 09, 2013

/s/

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MARIAN H. TULLY  
Administrative Law Judge  
Office of Administrative Hearings