

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA VIRTUAL ACADEMIES.

OAH Case No. 2016021035

ORDER DENYING REQUEST FOR  
RECONSIDERATION

On March 21, 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, and based on lack of ripeness for two of the issues raised in Student's complaint. On March 28, 2016, Student filed a request 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 free appropriate public education. Student contends 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 Parents therefore subsequently cancelled and voided the agreement.

APPLICABLE LAW AND DISCUSSION

*Motion for Reconsideration*

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.)

Here, Student has provided an additional letter in support of her motion for reconsideration not previously provided by either party. Student now contends that the parties' November 17, 2015 settlement agreement is null and void because Parents rescinded their consent to the agreement in a letter to CAVA dated December 20, 2015.

In their motion for reconsideration, Parents blame CAVA for not having provided the letter as support for CAVA's original motion to dismiss this case, filed with the Office of Administrative Hearings on March 3, 2016. However, Parents have given no explanation of why this letter was not included with Student's opposition to CAVA's motion to dismiss, which Parents filed on March 9, 2016. The letter was written by Parents. There is no indication that they did not have a copy of it prior to filing their opposition to CAVA's motion to dismiss. The letter is not new evidence. It was in existence at the time Student filed her opposition to the motion to dismiss. Student has not offered any explanation for her failure to present this letter as part of her original opposition to CAVA's motion to dismiss. Student's motion for reconsideration is therefore denied.

### *Dismissal*

Even if the December 20, 2015 letter was taken into consideration, CAVA's motion to dismiss would still be granted.

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.)

Here, Student failed to submit adequate evidence that the settlement agreement is no longer legally binding on the parties. Furthermore, Student's claim that there is no valid settlement agreement contradicts the claims in Student's complaint. The issues Student raised primarily allege that CAVA failed to abide by the November 17, 2015 settlement agreement. Student's assertions that CAVA offered Student a FAPE in the settlement agreement and failed to provide Student a FAPE by breaching the agreement 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. Further, Student's claims are still not ripe for adjudication because the terms of the settlement agreement provide that CAVA has until April 30, 2016, to provide the services indicated in the agreement.

#### ORDER

1. Student's Motion for Reconsideration is denied.
2. The March 23, 2016 Order dismissing Student's case is confirmed.

DATE: March 30, 2016

DocuSigned by:

*Darrell Lepkowsky*

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DARRELL LEPKOWSKY

Administrative Law Judge

Office of Administrative Hearings