BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019090001

PARENT ON BEHALF OF STUDENT,

v.

SANTA CLARA COUNTY OFFICE OF EDUCATION, DISCOVERY CHARTER SCHOOL II, AND SUNNYVALE SCHOOL DISTRICT.

DECISION

APRIL 10, 2020

On August 30, 2019, Student filed a due process hearing request, referred to as a complaint, with the Office of Administrative Hearings, known as OAH, naming Santa Clara County Office of Education, called SCCOE, and Discovery Charter School II, called Discovery. OAH granted Student's request for leave to amend the complaint, adding Sunnyvale as a party, and deemed Student's second amended complaint filed on January 6, 2020. On February 19, 2020, OAH continued the case for good cause.

ACCESSIBILITY MODIFIED

The parties jointly moved to bifurcate and hear first a jurisdictional issue related to SCCOE and Discovery. They requested to waive an in-person hearing, submit stipulated facts and joint evidence, and proposed a briefing schedule. On March 6, 2020, the undersigned administrative law judge granted the joint request and bifurcation to determine if Discovery and SCCOE are the local educational agencies, called LEA, responsible for Student during the applicable time period.

On March 10, 2020, the parties submitted stipulated facts and evidence. Student submitted a written opening brief on March 16, 2020. Respondents submitted written responding briefs on March 20, 2020. Student submitted a reply brief on March 24, 2020. On March 24, 2020, the bifurcated record was closed and submitted for decision.

On March 25, 2020, Discovery and SCCOE submitted a sur reply brief. The briefing scheduling included in the March 6, 2020 Order Following Prehearing Conference did not include the filing of a sur reply brief. On her own motion, the undersigned administrative law judge disregarded the sur reply brief.

On March 30, 2020, Student filed a motion to augment the record with new evidence in response to the sur reply brief. The sur reply brief was disregarded. Further, Student requested to augment the record with unstipulated evidence. The parties represented that this issue could be addressed through stipulated evidence and facts. Thus, Student's motion to augment the record is denied.

ACCESSIBILITY MODIFIED

ISSUE

Is Discovery and SCCOE the local educational agencies, known as LEA, responsible for Student's free an appropriate public education, called FAPE, from September 14, 2018, through March 10, 2020?

Discovery and SCCOE proceeded in a joint defense and argued closing briefs jointly. At no time was there any differentiation between the entities responsibility toward Student. Thus, because the agencies proceeded jointly and provided no argument regarding separate defenses, Discovery and SCCOE are discussed collectively. As a matter of law, these findings will have no impact on any agreements Discovery and SCCOE may have previously executed regarding their legal status or obligations to each other. All references below to Discovery also includes SCCOE.

JURISDICTION AND BACKGROUND

This hearing was held under the Individuals with Disabilities Education Act, called the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education, known as FAPE, that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511 (2006); Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see also 20 U.S.C. § 1415(i)(2)(C)(iii).) Accordingly, Student had the burden of proof on the sole issue in this bifurcated matter. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student, age 14, resides with Parents within the Sunnyvale boundaries at all relevant times. On May 1, 2014, Discovery found him eligible for special education. Student's eligibility categories are emotional disturbance and autism.

ISSUE: IS DISCOVERY AND SCCOE THE LEA RESPONSIBLE FOR STUDENT'S FAPE, FROM SEPTEMBER 14, 2018, THROUGH MARCH 10, 2020?

Student contends that Discovery and SCCOE violated the IDEA when it dis-enrolled him from Discovery after Parents unilaterally placed him in private school. Student argues that this constituted a change of placement without appropriate due process, and a denial of FAPE. Thus, Student maintains that he continues to be enrolled at Discovery, and Discovery and SCCOE remain the LEA responsible for his FAPE.

Discovery and SCCOE argue that Student's unilateral placement terminated his enrollment at Discovery, and he is now a privately placed Student. If this is incorrect, it maintains that Student waived any right to challenge its prior actions by entering into a settlement agreement between the parties. Additionally, Student's unilateral placement did not confer an ongoing obligation to a former Student no longer attending its charter school. Thus, Discovery and SCCOE contend that it is not the LEA responsible for Student between September 14, 2018, to the present.

Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56502, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, a nonprofit public charter school that is not otherwise included as a local educational agency, or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.) Children with disabilities who attend public charter schools retain all rights under federal and State special education law. (34 C.F.R. § 300.209(a); Ed Code, § 56145.)

The IDEA defines an LEA as "a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools and secondary schools." (20 U.S.C. § 1401(19)(A); 34 C.F.R. § 303.23(a).) Under California Law, an LEA means a school district as defined in Section 41302.5 or a charter school that is deemed an LEA under

Section 47641. (Ed. Code, § 47640.) LEA also means a charter school that is responsible for complying with all provisions of the IDEA and implementing regulations as they relate to LEA's. (*Ibid.*) Here, Discovery is a public school of SCCOE for the purposes of special education. SCCOE serves as the LEA for Discovery.

CHARTER SCHOOLS

The Legislature is charged with providing a public education system for the citizens of California. (Cal. Const., art IX, § 5.) It has done that through the establishment of public school districts. (*California Redevelopment Assn. vs. Mastosantos* (2011) 53 Cal.4th 231, 243.) More recently, the Legislature has also established charter schools. (Ed. Code, § 47600 et seq.)

The Charter Schools Act of 1992 provided for the establishment and operation of charter schools that operate independently of existing school districts. (Ed. Code, § 47605 et seq.) In enacting the Charter Schools Act, the Legislature intended to allow "teachers, parents, pupils, and community members to establish ... schools that operate independently from the existing school district structure." (Ed. Code, § 47601.) By enacting this statute, the Legislature hoped to improve pupil learning, increase learning opportunities, encourage innovation in our public schools, create professional opportunities for teachers, provide expanded choices of educational opportunities, hold schools accountable for their performance, and "provide vigorous competition within the public school system." (Ed. Code, § 47601.)

A Charter school petitions a chartering authority, generally the governing board of a public school district but occasionally a county board or the State Board of Education, for a charter. (Ed. Code, §§ 47605, subds. (a), (b), 47605.5, 47605.6, and

47605.8.) Charters are granted for a specific term, typically not in excess of five years. At the end of the term, the entity granting the charter may renew the school's charter. (Ed. Code, § 47607.) The charter school must comply with the Charter Schools Act, specified statutes, and the terms of its charter, but is otherwise exempt from the laws governing school districts. (Ed. Code, § 47610.) Here, SCCOE authorized Discovery's original charter in 2013, and renewed it in 2019.

DISCOVERY'S ADMISSION AND WITHDRAWAL POLICIES, AND STUDENT'S UNILATERAL PLACEMENT AND DISENROLLMENT

Admission into a charter school is usually achieved through an application process and lottery system. A charter school shall admit all students who wish to attend the school; however, if the number of students who wish to attend exceeds the school's capacity attendance, the students admitted will be determined by a random public drawing. (Ed. Code, § 47605.)

Discovery admits any student who applies and lives in California. If there are more applications than spaces available in any grade, Discovery admits students through a lottery system, then waitlists students. When spots become available, it admits students through the waitlist and then any new applications. Students already at Discovery are not subject to the lottery and are guaranteed admission the following year so long as there is no break in attendance.

A parent may withdraw a student from Discovery at any time. If a parent withdraws a student or declines an offered space, Discovery's policy is to automatically drop the student from attendance and offers the spot to the next waiting student. If a

student fails to attend the first five days of the school year, Discovery drops the student from attendance and offers the spot to the next waiting student.

Student attended Sunnyvale in kindergarten and first grade. Parents applied for Student's admission to Discovery for second grade, the 2013-2014 school year. Student was admitted to Discovery through the lottery and continued to attend for third, fourth, and the first half of fifth grade, during the 2016-2017 school year.

A dispute arose between the parties regarding Student's special education services and Student stopped attending school around January 2017. Discovery convened Student's annual individualized education program, called IEP, team meeting on March 30, 2017, and it was continued.

On May 16, 2017, Parents served a notice of unilateral placement at public expense. At the time of Parents' notice, Student's annual IEP, had not been completed and no offer of FAPE had been made for the 2017-2018 school year. On May 30, 2017, the continued IEP team meeting convened and was continued.

Discovery reported Student's transfer to the California Department of Education, and dropped him from its attendance. Student attended Helios, a private school, for the 2017-2018 school year and continues to attend that school.

The parties spent considerable effort in their briefs addressing Parents' request for unilateral placement and the legality of Student's unenrolled status. The parties, however, subsequently entered into a settlement agreement, the legal impact of which is analyzed herein.

THE SETTLEMENT AGREEMENT

On June 12, 2018, Student filed a due process request with OAH, case number 2018060547, against Discovery. The parties executed a final settlement agreement on September 13, 2018.

A party has 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 jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.) OAH does not have jurisdiction over claims seeking to enforce settlement agreements. The IDEA and the Education Code unambiguously assign jurisdiction for disputes regarding settlement agreements to federal courts and state courts of competent jurisdiction. The IDEA, and its implementing regulations, provide that settlement agreements resulting from mediation, or reached by the parties on their own through a resolution session, must result in a written agreement that is enforceable in any state court of competent jurisdiction or in a district court of the United States. (20 U.S.C. § 1415 (f)(1)(B)(iii), (e)(2)(F); 34 C.F.R. § 300.506(b)(6), (7)(2006); 34 C.F.R. § 300.510(d)(2006).)

In the joint statement of facts, the parties acknowledged that they executed a settlement agreement on September 13, 2018. The settlement agreement constituted a full and final settlement of all claims of any kind through the date of full execution of the agreement. In addition, Student's complaint in this matter did not challenge the settlement agreement.

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.)

In the settlement agreement, Parents waived:

- "any right or claims to any additional attorneys' fees or legal or [other] expenses of any kind with respect to the Disputes addressed in this Agreement based on the IDEA, the Rehabilitation Act, 42 U.S.C. §§ 1983 and 1988, the Americans with Disabilities Act, or any other provision of law";
- "any and all educationally based claims, demands, actions or causes of action of every kind and character, known or unknown, which may now have in connection with or arising out the Student's education through the date of full execution of this Agreement"; and
- all provisions of Section 1542 of the California Civil Code.

Parents received consideration for the settlement agreement in the form of past qualified educational expenses including reimbursement for Helios tuition, Quantum camp tuition, and psychological counseling services through the date of the executed agreement. The agreement did not include continuing relief of any kind.

Additionally, Student failed to negotiate for any prospective arrangement with Discovery regarding its belief of Student's unenrolled status and private placement, or arrange for a new FAPE offer. On May 3, 2018, Discovery requested clarification of Parents' request for an IEP addendum. It explained that it was confused with Parents' communication because they did not state any intention to re-enroll Student in Discovery, or that they were seeking a new offer of FAPE. Regardless, it offered two proposed dates for an IEP team meeting should Parents want a new FAPE offer. Further, Discovery explained to Parents that Student had not been enrolled at Discovery at any time during the 2017-2018 school year, and was now considered a privately placed student. Parent responded on May 8, 2018, refusing Discovery's offer of a new IEP team meeting. Thus, at the time Student filed for a due process hearing on June 12, 2018, Parents were aware that Discovery dis-enrolled Student and considered him privately placed. Despite this knowledge, Parents settled with Discovery on all issues. Student could have negotiated prospective obligations such as his status with Discovery and did not. Additionally, there was no operative IEP offer in effect on September 14, 2018, that could arguably suggest a future obligation of Discovery and SCCOE, or an ongoing dispute between the parties.

Here, the executed settlement agreement set forth a clear and unambiguous waiver of all past claims related to Student's educational program through the effective date of the settlement agreement, September 13, 2018.

Student's argument for imposing liability on Discovery rests heavily upon events leading up to the parties' settlement agreement that were resolved by that agreement. If Parents can now claim enrolled status while maintaining Student's private placement, when all issues were previously waived, they would be able to endlessly toll the deadline for a unilateral placement dispute to be resolved, and defeat the purpose of contractual settlement waivers.

Student relies on cases that stand for the proposition that an LEA must continue to offer a FAPE after unilateral placement. The cases are not persuasive and distinguished because all of the cases cited involve resident districts and not charter schools. Further, the cases do not speak to the responsibility of a charter school after unilateral placement and a subsequent settlement agreement between the parties.

Student cited *Briere v. Fair Haven Grade Sch. Dist. (Briere),* 948 F.Supp. 1242 (D.Vt.1996), that suggests that an LEA must continue to offer FAPE after unilateral placement. Again, this is not the question here. In that case, the district court concluded that the plethora of procedural violations committed by the resident school so "inhibited meaningful parental participation" that the "violations constitute[d] a denial of a free appropriate public education per se." *Id.* at 1255. There, the mother of a special education student was dissatisfied with her placement in mainstream classes at the outset of high school. *Id.* at 1247. After lodging objections, the mother unilaterally placed student at a private school in another state, and brought suit seeking tuition reimbursement from the school district. *Id.* at 1248. The district court found that defendants had committed significant procedural violations, including failure to develop an appropriate IEP during, *id.* at 1254, and failure to provide private school tuition

reimbursement when appropriate public placement within the state was unavailable, *id.* at 1249.

The *Briere* case is far removed from the present setting here. This case involves a unilateral placement from a charter school, not a resident school, with a subsequent settlement agreement with full waivers, followed by a new request for an IEP team meeting after the dispute resolved.

The two other related cases cited by Student are equally inapposite. In *M.K-N v. D.C., 35 F. Supp. 3d 1* (D.D.C. 2014) and *Noce v. D.C.*, No. CV 13-133 (ABJ-AK), 2014 WL 12768452 at * 3, Parents notified the school that they were removing student and student would be attending a private school. The school refused to reschedule an IEP team meeting during the unilateral placement dispute because it classified student as parentally placed in private school, and entitled to equitable services through an individual service plan rather than a student entitled to FAPE through an IEP.

In this case, Parents gave notice of unilateral placement notice in May 2017, and Student attended private school for the 2017-2018 school year. Discovery gave Student a FAPE offer in October 2018, during Student's unilateral placement at Helios, which Parents refused. Discovery again, in May 2018, offered to provide a new FAPE offer to Student. Parents declined the development of a new FAPE offer. The parties then settled all disputes through September 13, 2018. After the parties settled and waived all claims, Student requested a new FAPE offer from Discovery.

Student's cited cases do not involve the interplay of a settlement agreement following the unilateral placement from a charter school, thus, provides no relevant authority for this position, and what is offered is not persuasive. Additionally, the cases

do not speak to the threshold issue in this matter, if Discovery continues to be the LEA responsible for Student after unilateral placement from a charter school, and subsequent settlement agreement waiving all claims.

Student cites cases representing the idea that despite unilateral placement, Discovery is the responsible LEA. The cases cited, however, are unconvincing because all of them derive out of disputes with resident school districts and their ongoing obligations to students within their residential attendance boundaries. There is no dispute that a school of residence has obligations to students within its residential boundaries, even if they do not attend a resident school.

These obligations arise in the content of child find and request for IEPs. Under child find laws, resident school districts must identify, locate, and evaluate all children with disabilities within their geographic boundaries of responsibility who are in need of special education and related services. (20 U.S.C. § 1412(a)(10)(i); 34 C.F.R. § 148(a).) Charter schools do not have this obligation. A charter school must identify and evaluate students with disabilities or suspected disabilities within their jurisdiction. (20 U.S.C. § 300.201.) Once the obligation ends, any further obligation attaches through the child find obligations of a district of residence. (20 U.S.C. § 1412(a)(3)(A); see *D.P. ex rel Maria P. v. Council Rock Sch. Dist.,* 482 F. App'x 669, 672-673 (3rd Cir 2012).)

Further, an LEA must have an IEP in effect at the beginning of the school year for each child within the agency's jurisdiction. (20 U.S.C. §1414(d)(2)(A); Ed. Code, § 56344, subd. (c).) Student argues that after the settlement agreement Discovery should have offered a FAPE to Student, prenrollment, citing out-of-circuit cases *James ex rel James v. Upper Arlington City Sch. Dist*., 228 F.3d 764, 768 (6th Cir. 2000.), *cert. den'd,* 532 U.S. 995, (2001), and *Cleveland Heights-Univ. Heights City Sch. Dist. v. Boss*, 144 F. 3d 391,

39 (6th Cir. 1998).) This duty, however, has not been extended to charter schools, only districts of residence. This is also consistent with the policy of the Santa Clara County Special Education Local Plan Area II, for which Sunnyvale and SCCOE, including the dependent charter Discovery, are participants. "It is the policy of Santa Clara County SELPAs for District of Residence('DOR'), to stand ready to offer a FAPE, to identified students…if and when they enroll in a public school or express interest in enrolling in a public school." Additionally, when asked to reenroll, Parents refused, thus expressing no interest in attending Discovery.

Unlike a school district, a charter school's FAPE obligation turns on attendance, not residency or enrollment. Normally, a minor student attends the public school of the parents' residence. (Ed. Code, § 48200.) A school district is responsible for providing a FAPE to all eligible students between the ages of six and eighteen whose parent or legal guardian resides within the jurisdictional boundaries of the school district, subject to several specified exceptions. (*Union School District v. Smith* (9th Cir.1994) 15 F.3d 1519, 1525, fn. 1.)

Conversely, a charter school is one "to which parents choose to send their children." (20 U.S.C. § 7221i(2)(H).) Thus, a public charter school does not admit students by residency; it admits only volunteers. (Ed. Code, § 47605, subd. (d)(2).) "Children with disabilities who *attend* public charter schools and their parents" retain all rights under the IDEA and its regulations. (34 C.F.R. § 300.209(a) (2006).) A charter school that is a public school of an LEA must "serve children with disabilities *attending* those charter schools in the same manner as the LEA serves children with disabilities in its other schools…" (20 U.S.C. § 1413(a)(5)(A); 34 C.F.R. § 300.209(b)(1)(i) ((2006).) "A child with disabilities *attending* the charter school shall receive special education

instruction and services, or both, in the same manner as a child with disabilities attending another public school of that local educational agency." (Ed. Code, § 47646 subd. (a).) An LEA, including a charter school, also continues to be the responsible LEA when it places the disabled student at a different school through the IEP process. (20 U.S.C. § 1412(a)(10)(B)(i).) Thus, unlike school districts whose obligations toward children with disabilities is tied to parents' residency, a charter school's obligation relies on the choice of parents to send student to a charter school, and student's attendance.

Student also argued that focusing on the "attendance" language in the charter school statute eviscerates the IDEA's ability to compensate Parents for a unilateral placement when an active dispute exists. No finding is reached in the Decision regarding this argument because those are not the facts in this matter. Here, the dispute precipitating the unilateral placement terminated with the settlement agreement. Following that termination, Student was not attending Discovery and when expressly offered an opportunity to reenroll, he failed to do so.

As of September 14, 2018, despite Student's enrollment status, he had not attended Discovery since approximately January 2017, about 20 months. Student was not placed at Helios by Discovery through an IEP. Instead, Parents elected to keep Student at Helios, a private school. The parties had resolved all disputes between the parties through a settlement agreement. The parties failed to proffer prospective obligations, enrollment status, or future IEP team meetings, and waived all rights to introduce these issues again. There was no outstanding IEP in effect. Student had no intent of reenrolling. Unlike a school district who has LEA obligations to resident students attending and not attending district schools, charter schools do not. Accordingly, Discovery's jurisdiction of Student ended.

Student failed to prove by a preponderance of the evidence that Discovery continued to be the LEA responsible for Student's FAPE from September 14, 2018, through March 10, 2020.

CONCLUSIONS AND PREVAILING PARTY

As required by California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided.

Is Discovery and SCCOE the LEAs responsible for Student's FAPE, from September 14, 2018, through March 10, 2020?

No, Discovery and SCCOE are not the responsible LEAs for Student's FAPE from September 14, 2018, through March 10, 2020.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

/s/
Cynthia Fritz
Administrative Law Judge
Office of Administrative Hearings