BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. LOS ANGELES UNIFIED SCHOOL DISTRICT.	OAH Case No. 2019030607 ORDER DENYING MOTION TO DISMISS

On March 15, 2019, Student filed a Request for Due Process Hearing with the Office of Administrative Hearings, naming Los Angeles Unified School District. On May 15, 2019, Los Angeles filed a Notice of Settlement, seeking dismissal of Student's complaint. On May 15, 2019, Student filed an Opposition to the Notice of Settlement. On May 21, 2019, OAH issued an Order Following Prehearing Conference that denied Los Angeles's request to dismiss the complaint, on the grounds that it was unclear whether the parties entered into a settlement agreement.

On May 22, 2019, Los Angeles filed a Motion to Dismiss Student's complaint. On May 24, 2019, Student filed an Opposition to Los Angeles's motion. On May 28, 2019, OAH denied the Motion to Dismiss, ordered an evidentiary hearing to determine whether the parties entered into a settlement agreement, and continued the due process hearing to June 25, 2019.

Administrative Law Judge Tara Doss presided over the evidentiary hearing in Van Nuys, California, on May 29, 2019. Matthew Pero, Attorney at Law, represented Student. Student's mother attended the hearing. Meagan Kinsey, Attorney at Law, represented Los Angeles. Natalie Hofland, Litigation Coordinator, attended the hearing on behalf of Los Angeles. The parties submitted closing arguments on June 5, 2019.

FACTUAL FINDINGS

On April 30, 2019, Parent and Los Angeles Litigation Coordinator, Natalie Hofland, participated in mediation. The parties did not settle the case during mediation, but Ms. Hofland provided Parent a written proposed settlement agreement to consider. On May 1, 2019, Ms. Hofland emailed Parent a second written proposed settlement agreement that corrected the location of Los Angeles's reimbursement office. On May 8, 2019, Ms. Hofland emailed Parent a third written proposed settlement agreement that incorporated some revisions Parent requested.

On May 9, 2019, the parties were still negotiating the terms of the agreement. Parent requested correction of some typographical errors and proposed an increase in the monetary settlement amount. Ms. Hofland agreed to revise the typographical errors, but rejected Parent's proposal to increase the settlement amount. At 2:31 p.m., on May 9, 2019, Ms. Hofland emailed Parent a fourth written proposed settlement agreement and conditioned the proposal on Parent returning the signed agreement by 3:00 p.m. that day.

On May 9, 2019, at 3:02 p.m., Parent emailed the settlement agreement to Ms. Hofland. Parent made several handwritten edits on the agreement, including correcting the case number and spelling of Parent's name on multiple pages, and making changes to the language in some of the terms. Parent signed the agreement and wrote underneath her signature and the signature line designated for Ms. Hofland that the "handwritten edits…above are approved."

On May 9, 2019, Ms. Hofland attended an all-day training in her office building. The training was on the second floor and Ms. Hofland's desk was on the 17th floor. Ms. Hofland had her laptop with her during the training and communicated with Parent via email throughout the day. Upon receipt of Parent's email with the agreement attached, Ms. Hofland left the training and returned to the 17th floor to print it out. Ms. Hofland left her laptop on the second floor so she asked a colleague to print the agreement for her. What happened next is unclear.

During testimony, Ms. Hofland described three different scenarios. First, Ms. Hofland stated she signed the agreement with Parent's handwritten edits after printing it, and then returned to her meeting on the second floor. Later, Ms. Hofland stated she needed her supervisor, Diana Massaria, to see the agreement with the handwritten edits, so she took the agreement to Ms. Massaria's office but she was not there. Upon seeing Ms. Massaria was not in her office, Ms. Hofland signed the agreement, but could not remember if she left it on Ms. Massaria's desk or her own desk. Finally, Ms. Hofland stated she could not show Ms. Massaria the agreement on May 9, 2019, because Ms. Massaria was on a telephone conference in her office. Ms. Hofland's testimony about what happened after her colleague printed the agreement was inconsistent and thus, unreliable.

Ms. Hofland did not send Parent a copy of the signed agreement on May 9, 2019, or notify Parent she signed the agreement. On May 10, 2019, at 12:56 p.m., Parent emailed Ms. Hofland to determine whether Los Angeles accepted Parent's edits to the agreement. Parent asked Ms. Hofland to send her the fully executed agreement so that she could submit her reimbursement request pursuant to the agreement. At or around 2:00 p.m., Ms. Hofland showed the agreement with Parent's handwritten edits to Ms. Massaria. Ms. Massaria told Ms. Hofland to have Parent sign a "clean copy" of the agreement without the handwritten edits. At 2:53 p.m., Ms. Hofland emailed Parent letting her know Los Angeles accepted her changes and that she was sending a "clean copy" of the agreement for Parent's signature. At 3:34 p.m., Ms. Hofland emailed Parent again asking her to return the agreement so she could "get it back to [her]" and send Los Angeles's reimbursement forms. At 5:01 p.m., Ms.

Hofland emailed Parent asking her again to sign the "clean copy." Ms. Hofland attached the reimbursement forms with this email. Ms. Hofland did not notify Parent she signed the agreement with Parent's handwritten edits.

Parent did not sign the "clean copy" of the agreement on May 10, 2019. Instead, on May 11, 2019, at 3:10 p.m., Parent emailed Ms. Hofland and informed her that since Los Angeles had not sent Parent the signed agreement from May 9, 2019, Parent was no longer willing to proceed under the proposed settlement terms. Specifically, Parent indicated she revoked the proposed terms of settlement as stated in her handwritten edits to the agreement. At 3:21 p.m., Ms. Hofland responded via email that she signed the agreement with Parent's edits, but still asked Parent to sign the "clean copy" and return it to her. At 4:42 p.m., Ms. Hofland offered to send Parent the fully executed agreement with Parent's edits.

On May 13, 2019, Ms. Hofland emailed Parent a fully executed copy of the agreement with Parent's handwritten edits. The date next to Ms. Hofland's signature on the agreement was May 9, 2019. Ms. Hofland asked Parent to dismiss this case with prejudice.

APPLICABLE LAW

The purpose of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education," and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) 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).) OAH's jurisdiction 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 to enforce settlement agreements. (*Id.* at p. 1030.)

However, OAH may interpret a settlement agreement for the purposes of determining whether OAH has jurisdiction to decide the issues in the complaint. 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.) A contract is an agreement to do or not do a certain thing. (Civ. Code, § 1549.) The parties must consent in order to form a contract. (Civ. Code, § 1550.) Consent must be mutual and communicated to the other party. (Civ. Code, § 1565.) Consent is mutual when the parties agree upon the same thing in the same sense. (Civ. Code, § 1580.) Consent is considered fully communicated between the parties as soon as the party accepting a proposal communicates acceptance of the proposal to the other party. (Civ. Code, § 1583.)

A contract is either express or implied. (Civ. Code, § 1619.) The terms of an express contract are stated in words. (Civ. Code, § 1620.) Contracts may be written or oral, unless

otherwise required by law. (Civ. Code, § 1622.) A written contract supersedes all negotiations or stipulations that took place before or during the creation of the document. (Civ. Code, § 1625.) A written contract takes effect upon its delivery to the party in whose favor it is made. (Civ. Code, § 1626.)

If the parties intend their proposed agreement to be in writing before it is considered complete, there is no contract until the formal agreement is signed. (*Apablasa v. Merritt & Co.* (1959) 176 Cal.App.2d 719, 729.) There is no meeting of the minds while the parties are negotiating the terms of the agreement. (*Id.* at p. 730.)

An offer or proposal, and an acceptance are required to form a contract. Acceptance of a proposal must be absolute and unqualified. (Civ. Code, § 1585.) A qualified acceptance or one with conditions is a new proposal, putting an end to the original offer. (*Ibid*; *Panagotacos v. Bank of America* (1998) 60 Cal.App.4th 851, 855-856.) If the party accepting the proposal requests additional or different terms from those offered, the acceptance becomes a counteroffer. (*Guzman v. Visalia Community Bank* (1999) 71 Cal.App4th 1370, 1376.) The interpretation of whether an acceptance of an offer occurred is a question of fact. (*Guzman*, *supra*, at pp. 1376-1377.) The test in determining whether there was an acceptance is not what the party making it thought it meant or intended it to mean. (*Ibid*.) Rather, the test is what a reasonable person in the position of the parties would have thought it meant. (*Ibid*.)

A proposal may be revoked at any time before its acceptance is communicated to the party making the proposal. (Civ. Code, § 1586; *T.M. Cobb Co., Inc. v. Superior Court* (1984) 36 Cal.3d 273, 278.) A proposal is revoked when the party making the proposal communicates the revocation to the other party. (Civ. Code, § 1587.)

DISCUSSION

Student argued the parties did not reach a settlement agreement because Los Angeles did not sign and deliver the agreement with Parent's handwritten edits before Parent revoked the proposed settlement terms. Additionally, Student argued Ms. Hofland's email stating Los Angeles accepted Parent's proposed changes was not sufficient to constitute acceptance. Instead, Los Angeles was required to sign and deliver the agreement to Parent in order for it to become binding. Finally, Student argued Ms. Hofland's insistence of Parent signing a "clean copy" of the agreement, showed Los Angeles did not intend the agreement with Parent's handwritten edits to be the final settlement agreement.

Los Angeles argued the parties entered into a binding settlement agreement on May 9, 2019, when Ms. Hofland signed the agreement with Parent's handwritten edits. Los Angeles argued it was not required to provide Parent with notice of Ms. Hofland's signature on the agreement, or with a copy of the fully executed agreement to make it binding. Additionally, Los Angeles argued Parent's handwritten edits on the agreement did not represent a new proposal because she signed the agreement and wrote that her signature approved the handwritten edits. Instead, Parent's actions showed she intended the agreement with her

handwritten edits to be the final agreement between the parties. Even if the agreement with Parent's handwritten edits constituted a counteroffer, Los Angeles argued it accepted the offer when Ms. Hofland signed the agreement on May 9, 2019, and emailed Parent on May 10, 2019, indicating acceptance of her changes. Finally, Los Angeles argued Parent did not have the authority to rescind the agreement on May 11, 2019, because it was already final and binding on the parties.

The parties clearly intended any agreement between them to be in writing. Ms. Hofland provided Parent with at least four different versions of proposed written settlement agreements, and both parties requested signatures from the other in order to make the agreement final. Thus, the rules governing written contracts must be followed when determining whether the parties entered into an agreement. Pursuant to Civil Code section 1626, any agreement the parties reached did not take effect until they both signed the written settlement agreement and it was delivered to the other party.

Ms. Hofland's email to Parent at 2:31 p.m. on May 9, 2019, with the fourth version of the proposed settlement agreement, was an offer. Parent did not absolutely and unequivocally accept Los Angeles's offer. Instead, Parent made several handwritten edits, including changes to the language in some of the terms. Therefore, the agreement with handwritten edits was a counteroffer, and Los Angeles's offer terminated. In order for a contract to be formed, first, Los Angeles had to absolutely and unequivocally accept Parent's counteroffer. Once Los Angeles communicated acceptance, both parties had to sign the agreement and deliver it to the other. Only after these steps were completed would the settlement agreement be binding.

Initially, Los Angeles did not absolutely and unequivocally accept Parent's May 9, 2019 proposal. Instead, on May 10 and 11, 2019, Ms. Hofland repeatedly asked Parent to sign a "clean copy" of the agreement. Ms. Hofland conditioned the formation of an agreement on Parent signing and returning the "clean copy." Ms. Hofland's testimony that she signed Parent's proposed agreement on May 9, 2019, was inconsistent and thus, unreliable. Even if Ms. Hofland signed the agreement on May 9, 2019, she did not deliver the signed agreement to Parent until May 13, 2019.

Los Angeles's argument that a binding contract was formed upon Ms. Hofland's signature, along with her May 10, 2019 email to Parent indicating acceptance of Parent's proposed changes, is not persuasive. Since the parties intended the agreement to be in writing, no contract could be formed until both parties signed the settlement agreement and delivered it to the other. Thus, the earliest a contract could have been formed was May 13, 2019. However, since Parent revoked her counteroffer on May 11, 2019, no contract was ever formed between the parties.

Accordingly, Los Angeles's Motion to Dismiss is denied. OAH has jurisdiction to decide the remaining issues in the case.

ORDER

1. Los Angeles's Motion to Dismiss is denied.

2. The due process hearing shall proceed on all remaining issues. The hearing is scheduled for June 25, 26, and 27, 2019.

IT IS SO ORDERED.

DATE: June 7, 2019

DocuSigned by:
Tara Doss
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TARA DOSS
Administrative Law Judge
Office of Administrative Hearings