BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FOLSOM CORDOVA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2013040098 ORDER DENYING IN PART AND GRANTING IN PART DISTRICT'S MOTION TO DISMISS ISSUES

On April 3, 2013, Parents on behalf of Student filed a request for due process hearing (complaint) against the Folsom Cordova Unified School District (District), which was given Office of Administrative Hearings (OAH) Case No. 2013040098. The complaint alleged that the District denied Student a free appropriate public education (FAPE) in a variety of ways.

On September 6, 2013, the District filed a complaint against Student seeking to exit her from special education. On September 16, 2013, Student filed a motion to amend her complaint, together with a proposed amended complaint. On September 20, 2013, OAH consolidated the two matters and granted Student's motion to amend her complaint, which was deemed filed on the day of the order.

On October 28, 2013, the District filed a motion to dismiss several issues in the amended complaint. Student filed an opposition to the motion on November 7, 2013, and the District filed a reply on November 8, 2013.

APPLICABLE LAW

Statute of Limitations

With two exceptions, a request for a due process hearing must be filed "within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request." (Ed. Code, § 56505, subd. (l).) The two-year limit does not apply when (i) the parent or student was prevented from filing a request for due process due to specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint, or (ii) the local educational agency withheld information from the parent or student that was required to be provided to the parent or student. (*Ibid.*; see also 20 U.S.C. § 1415(f)(3)(D).)

Settlement Agreements

The interpretation of settlement agreements is based on familiar and well-established principles of contract law. (*Miller v. Fairchild Indus*. (9th Cir. 1986) 797 F.2d 727, 733; see also *Jeff D. v. Andrus* (9th Cir. 1990) 899 F.2d 753, 759.) If a written agreement is not equivocal or ambiguous, "the writing or writings will constitute the contract of the parties, and one party is not permitted to escape from its obligations by showing that he did not intend to do what his words bound him to do." (*Brant v. California Dairies, Inc.* (1935) 4 Cal.2d 128, 134; see also 1 Witkin, Summary of Cal. Law, Contracts, § 89 [Ordinarily, one who accepts or signs an instrument, which on its fact is a contract, is deemed to assent to all its terms . . . ."].) By entering into a settlement agreement, each party agrees to "extinguish those legal rights it sought to enforce through litigation in exchange for rights secured by the contract." (*Village of Kaktovik v. Watt* (D.C.Cir. 1982) 689 F.2d 222, 230.)
\

DISCUSSION

Statute of Limitations

Parents assert that the District withheld information from them that prevented them from filing for a due process hearing earlier than April 3, 2013, the date the original complaint in this matter was filed. Parents represent in their opposition to the District's motion that it was not until April 28, 2013, that they were given the "full" report of a "Connors-3" assessment that was undertaken in April 2011 and discussed at an individualized education program (IEP) team meeting on May 13, 2011. Parents further represent that if they had seen the full results of the Connors-3 on May 13, 2011, they would have filed for a due process hearing then because the full Conners-3 shows, contrary to the District's representations at the May 13, 2011 IEP team meeting, that Student then suffered from Attention Deficit Hyperactivity Disorder (ADHD), and the May 13, 2011 IEP (to which Parents apparently agreed) did not make adequate provisions for the educational consequences of that disorder.

The District responds that the full assessment results were always available in Student's files and that Parents could have requested them earlier. That argument is unpersuasive because the District has an affirmative duty to deliver assessment results to parents at or before the IEP team meeting at which those results must be discussed. (Ed. Code, § 56329, subd. (a)(3); see also 34 C.F.R § 300.306(a)(2).)

Whether Parents would have filed for a due process hearing in 2011 had the District not concealed the full results of the Connors-3 therefore presents a triable issue of fact that

must await resolution at hearing. The District's motion to dismiss issues on the ground of the statute of limitations must be denied.

Assessment Claims Barred by the Settlement Agreement

Parents' original complaint, filed on April 3, 2013, made numerous allegations that the District failed to conduct certain assessments properly and failed to assess Student in all areas of suspected disability. At a mediation on May 9, 2013, the parties entered into an Interim Settlement Agreement ("the Agreement") that obliged the District to reimburse Parents for independent educational evaluations (IEEs) by Jane Johnson Speech Services and Dr. Lisa Sporri, and to contract with American River Speech for an assessment in the area of speech and language. In return, Parents agreed in Section 7 of the Agreement that "the IEEs agreed to and funded through this Interim Agreement resolves all assessment and IEE issues raised in [*Student*] *v. Folsom Cordova Unified School District,* Case No. 2013040098." Parents' amended complaint nonetheless repleads and embellishes the assessment and IEE issues set forth in the original complaint, and the District seeks to dismiss those allegations as barred by the Agreement.

Parents argue that the language of Section 7 of the Agreement is ambiguous; that extrinsic evidence is therefore admissible to establish its meaning; and that they can prove they never intended to waive the assessment claims in the original complaint insofar as they asserted liability for past assessment failures, but intended only to waive assessment claims related to a future assessment they sought as relief. They claim that the assessments for which they successfully bargained in the Agreement "were for prospective purposes" and "were never intended to settle or waive anything concerning the past."

However, nothing in the language of Section 7 supports the distinction Parents now make. And there is nothing ambiguous about Section 7's waiver; the language "resolves all assessment and IEE issues," in the context of the Agreement, has the plain meaning that the parties intended to settle those claims. The word "resolve" derives from the Latin word "resolvere, meaning "to loosen, undo, settle . . ." (Online Etymology Dictionary (Douglas Harper 2010)(<http://www.dictionary.reference.com/browse/resolve?s=t>[as of November 26, 2013]; see also Merriam-Webster Dictionary (<http:/www.merriam-webster.com/dictionary/resolves [as of November 26, 2013]["to settle or solve" something].). The Individuals with Disabilities Education Act requires that after parents file for a due process hearing, they and the district meet in a "resolution session" to attempt to settle their disputes. (20 U.S.C. § 1415(f)(1)(B); see also Ed. Code, § 56501.5, subd. (a)["resolution meeting"].) No extrinsic evidence is required or permitted to establish the meaning of

Section 7 of the Agreement. Parents' argument that to accomplish a waiver the words "waive" and "claim" must be employed is unsupported by any authority.

Parents further argue that any interpretation of Section 7 other than the one they now offer is absurd, as no parent in their circumstances would have waived past assessments. On the contrary, by promptly obtaining the immediate and certain relief of monetary compensation for two assessments they funded and the District's agreement to fund a third, Parents received considerable value from the Agreement. They avoided the expense and uncertainty of litigating those issues and the risk that they would not prevail on those issues. Parents are bound by the Agreement they made, and the allegations of the amended complaint making the same claims they waived must be dismissed.

ORDER

1. The District's motion to dismiss issues as barred by the statute of limitations is denied.

2. The District's motion to dismiss the allegations of the amended complaint relating to assessments and IEEs is granted as follows:

a. The claims denominated 1.h, 1.i, 1.j, 1.k, and 4.t, are dismissed with prejudice.

b. The claim denominated 1.n. ["failing to properly and/or accurately report results of assessments"] is dismissed with prejudice insofar as Student seeks relief premised upon it, but not insofar as it may support their argument concerning the statute of limitations.

Dated: November 27, 2013

/s/
CHARLES MARSON
Administrative Law Judge
Office of Administrative Hearings