BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN BERNARDINO COUNTY SUPERINTENDENT OF SCHOOLS.	OAH CASE NO. 2013070240 ORDER DENYING RECONSIDERATION AND MOTION TO DISMISS

On July 3, 2013, Student filed a Request for Due Process Hearing (complaint), naming San Bernardino County Superintendent of Schools (SBCSS) with the Office of Administrative Hearings (OAH). On July 12, 2013, SBCSS filed Motion to Dismiss, alleging that although Student attended a special day class (SDC) that it operated, it was not the responsible public agency to provide Student with a free appropriate public education (FAPE). SBCSS also contended that Student's settlement agreement with the Redlands Unified School District (Redlands) precludes Student's complaint. On July 22, 2013, OAH issued an order denying SBCSS's Motion to Dismiss as whether SBCSS was a responsible public agency because a triable issue for hearing existed and denied the request as to the settlement agreement because a copy was not attached.

On August 1, 2013, SBCSS filed a second Motion to Dismiss, alleging, again, that it was not the responsible public agency to provide Student with a FAPE, and that Student's complaint is barred by a settlement agreement. Student timely opposed the Motion to Dismiss.

APPLICABLE LAW

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, § 56501, subd. (a).) A "public agency" is defined as "a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs." (Ed. Code, §§ 56500 and 56028.5.)

OAH 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.)

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

Reconsideration

As to SBCSS' contention that it is not responsible for providing Student with a FAPE because Student is a resident of Redlands and Redlands, not SBCSS, is the responsible public agency, SBCSS alleges no new facts, circumstances, or law in support of the request for reconsideration. The operating agreement documents that SBCSS included in it motion for reconsideration are not conclusive that a triable issue for hearing does not exist. Instead of rehashing substantially the same factual and legal arguments, SBCSS should prepare to take this matter to hearing if it believes that it is not responsible for providing Student with a FAPE. Further attempts by SBCSS to raise again this contention in further motions may subject SBCSS to sanctions.

Accordingly, SBCSS's request for reconsideration is denied.

Settlement Agreement

Regarding SBCSS's contention that Student's complaint is barred by the terms of the settlement agreement in OAH Case No. 2013050410 that Student entered into with Redlands, the July 22, 2013 order invited SBCSS to file a subsequent motion to dismiss if it included a copy of the settlement agreement, which it did. SBCSS also included documents that set forth how school districts like Redlands may request that SBCSS assess and provide services to students and how the school districts shall pay for SBCSS's services. However, SBCSS did not cite to any precedential legal authority that the release in paragraph 6 in the settlement agreement with Redlands also included SBCSS when SBCSS was not named as a party in OAH Case No. 2013050410. Additionally, none of the operating agreement documents that SBCSS included in its motion discuss a school district's responsibility to

include protection to SBCSS in any settlement agreement that a school district enters into when it uses SBCSS services that are the subject of the due process complaint. Accordingly, SBCSS's motion to dismissed in denied.

ORDER

1. SBCSS's motion for reconsideration is denied.

2. SBCSS's Motion to Dismiss is denied.

3. The matter shall proceed as scheduled.

Dated: August 13, 2013

/s/
PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings