

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. 2010100031

ORDER GRANTING STUDENT'S
REQUEST FOR RECONSIDERATION
AND GRANTING IN PART THE
DISTRICT'S MOTION TO DISMISS

On October 28, 2010, the undersigned administrative law judge issued an order that granted Los Angeles Unified School District's (District) unopposed motion to dismiss Student's claims through January 22, 2010, pursuant to the parties' agreement to resolve Student's September 1, 2009 Informal Dispute Resolution (IDR) request. On October 29, 2010, Student filed a motion for reconsideration, contending that his opposition to the District's motion was due on October 28, 2010, and good cause existed to dismiss the District's motion. On November 2, 2010, the District filed an opposition to Student's motion, and Student filed a reply on November 3, 2010.

APPLICABLE LAW

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.)

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); see also 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.)

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

Student’s counsel, N. Jane DuBovy, does not provide an adequate explanation why Student did not file a timely response to the District’s October 22, 2010 motion to dismiss, served by facsimile transmission. Regarding why Student did not file a timely response to the District’s motion, Student contends that Ms. DuBovy’s law office first saw the motion on Monday, October 25, 2010, because her law office had closed early on Friday, October 22, 2010. Therefore, Ms. DuBovy’s office believed that its response was due on October 28, 2010, and not October 27, 2010. Student’s motion does not explain why Ms. DuBovy’s office did not check the date on the District’s proof of service, the facsimile transmittal or seek an order to file a late response. Although, Ms. DuBovy failed to ensure that Student filed a timely response to the District’s motion, Student should not be punished for the failure of Ms. DuBovy’s office to notice when the District served its motion. According, Student’s motion for reconsideration will be considered.

In the motion for reconsideration, Student alleges new facts, circumstances, or law in support of the request for reconsideration regarding whether Father waived all of Student’s educational claims through January 22, 2010, or just claims related to speech and language services. Therefore, Student’s motion for reconsideration is granted.

Student contends that, in the January 22, 2010 agreement, Father only waived Student’s claims regarding speech and language services, and not all of Student’s educational claims. According to Student’s motion, Student was not represented by legal counsel in the IDR process and that Father only sought in the IDR request speech and language services. Further, Father did not know that when he signed the January 22, 2010 agreement that he waived all of Student’s educational claims through that date, and not just Student’s speech and language claims.

The District does not contend in its motion to dismiss or opposition to the motion for reconsideration that District personnel explained to Father the waiver language. While the January 22, 2010 agreement is clear regarding the waiver of Student’s speech and language claims, the waiver language is ambiguous, without further evidence, regarding whether Father waived all of Student’s educational claims. Accordingly, the District’s motion to dismiss is granted as to Student’s claims through January 22, 2010, regarding his speech and

language claims, and denied as to all other claims as a triable issue for hearing exists regarding the breadth of the waiver language in the January 22, 2010 agreement.

ORDER

1. Student's motion for reconsideration is granted.
2. The District's motion to dismiss is granted in part as to Student's claims regarding speech and language services through January 22, 2010.
3. An issue for hearing shall be whether Student waived all educational claims through January 22, 2010, or just claims regarding speech and language services.

IT IS SO ORDERED.

Dated: November 4, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings