

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

MODESTO CITY SCHOOL
DISTRICT,

Respondent.

OAH CASE NO. N 2007080202

**ORDER DENYING MOTION TO
DISMISS**

Student, represented by his mother, filed a request for due process hearing (complaint) in this matter on August 8, 2007. A second amended complaint filed September 21, 2007, was held sufficient on October 2, 2007. On December 21, 2007, the District filed a document entitled "Stipulation to Requested Remedies and Motion to Dismiss," representing that the District is willing to stipulate to each of the requested resolutions in Student's second amended complaint, and arguing that the matter should therefore be dismissed because there is no live controversy between the parties. On December 24, 2007, Student filed an Opposition to the Motion to Dismiss, refusing the proffered stipulation and insisting on proceeding to hearing.

APPLICABLE LAW

A party who files an adequate complaint in a dispute under the Individuals with Disabilities in Education Act (IDEA) is generally entitled to a hearing on his claims. (20 U.S.C. § 1415(f)(1)(A); Ed. Code, §§ 56043(s), 56501(b)(4).)

A stipulation is a voluntary agreement between adverse parties to litigation, and is generally interpreted and enforced according to the law of contracts. (*Harris v. Spinali Auto Sales, Inc.* (1966) 240 Cal.App.2d 447, 452-453; *Los Angeles City School Dist. v. Landier Inv. Co.* (1960) 177 Cal.App.2d 744, 750-751; see, 1 Witkin, Cal. Procedure (4th ed. 1996) Attorneys, § 289, pp. 360-361.)

DISCUSSION

A stipulation by a party to litigation is a voluntary act; it cannot be coerced by a tribunal. Since Student is unwilling to agree to the stipulation the District has proposed, the proposed stipulation is without effect. An order granting the District's motion would amount to the forcing of a stipulation upon an unwilling party. It would also leave Student with no legally enforceable promise. The motion to dismiss is therefore DENIED.

IT IS SO ORDERED.

Dated: December 27, 2007

A handwritten signature in cursive script, appearing to read "Charles Marson", written over a horizontal line.

CHARLES MARSON
Administrative Law Judge
Special Education Division
Office of Administrative Hearings