

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania Special Education Hearing Officer
Final Decision and Order

CLOSED HEARING
ODR File Number: 20197-17-18

Child's Name: B.F. **Date of Birth:** [redacted]

Date(s) of Hearing:
March 13, 2018

Parent:
Parent(s)

Counsel for Parent
Pro Se

Local Education Agency:
School District of Philadelphia
Office of General Counsel
440 N. Broad Street Suit 313
Philadelphia, PA 19130

Counsel for the LEA
Jenna Berman, Esquire
Office of General Counsel
440 N. Broad Street Suit 313
Philadelphia, PA 19130

Hearing Officer: Linda M. Valentini, Psy.D.
Certified Hearing Official

Date of Decision: 3/19/18

Background and Procedural History

Student¹ is an early-teen aged student who is eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA) and PA Chapter 14 under the classification of other health impairment.²

The Parent originally requested a due process hearing, asserting that the District denied Student a free appropriate public education (FAPE) in various ways. The parties held a resolution meeting and came to an agreement; on February 27, 2018 the District notified the hearing officer that there was an agreement. On that same date the hearing officer contacted the Parent to verify that there had been an agreement; on February 28, 2018 the Parent responded, informing the hearing officer that the parties were still negotiating, that there was no agreement, and furthermore that there had already been a breach of the agreement such that the agreement was not valid.

On February 28, 2018 in light of the Parent's response District counsel requested a conference call. During the March 2, 2018 call, the District maintained that a valid settlement agreement does exist and moreover that no breach occurred.

During the conference call the hearing officer explained that hearing officers do have the authority to determine whether an agreement exists, but do not have authority to enforce existing agreements. Therefore, the first issue to be determined at the scheduled hearing was whether an agreement in fact exists; if there is an existing agreement the case would be dismissed. Alternatively, if there is no agreement, then the issues raised in the Parent's complaint would be heard and a decision rendered thereafter.

Although the parties were encouraged to further attempt to resolve their conflict they could not, and so notified the hearing officer. The District subsequently requested that the first hearing session, as well as the parties' 5-day disclosures, address only the threshold question of whether a valid settlement agreement exists. The hearing officer granted this request.

Based upon the preponderance of the evidence before me I find in favor of the District.

Issue

Does a valid settlement agreement between the parties exist?

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. The identifying information appearing on the cover page or elsewhere in this decision will be redacted prior to posting on the website of the Office for Dispute Resolution as part of its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are set forth in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). 29 U.S.C. § 794.

Findings of Fact

1. The Parent filed a due process complaint on January 26, 2018. The parties held a resolution meeting on February 12, 2018; the Parent participated by telephone. [NT 13]
2. The Special Education Director for Neighborhood Network 3 has the authority to enter into resolution agreements on behalf of the District. [NT 12]
3. Pursuant to the resolution meeting, the parties came to an agreement. [S-2]
4. The District's attorney mailed a copy of the agreement to the Parent on February 14, 2018, along with a copy of the Resolution Meeting Data Form that the District would be sending to the Office for Dispute Resolution. [NT 13; S-3, P-1]
5. The Parent signed, dated, and returned the settlement agreement on February 15, 2018 at 11:56 am. [NT 25-26; S-3]
6. The Parent's email to District's counsel read, "Here is the Signed Settlement Agreement. Everything appears to be in Order with the Resolution Agreement form you attached. It has been a Pleasure working with you and I am appreciative of the Assistance Yourself and [the special education director] provided in this matter." (capitalization in the original) [S-5]
7. District's counsel sent the copy of the settlement agreement containing the Parent's signature to the Director of Special Education of Neighborhood Network Three. The Director signed, dated, and returned it to District counsel on February 15, 2018 at 12:26 pm. [NT 15-17, 26; S-5³]
8. The Parent did not verbally or in writing rescind her acceptance of the settlement agreement within three days of signing it. [NT 29-30]

Legal Basis

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v.*

³ This document was considered privileged attorney/client communication and therefore portions are redacted. The document was used in the hearing solely to establish the date on which the Director signed and returned the agreement, since the Parent alleged that the Director's signature may have been back-dated. [NT 24-25, 28]

Ramsey Board of Education, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012). In this case the Parent asked for the hearing and thus assumed the burden of proof.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); The District Court “must accept the state agency’s credibility determinations unless the non-testimonial extrinsic evidence in the record would justify a contrary conclusion.” *D.K. v. Abington School District*, 696 F.3d 233, 243 (3d Cir. 2014); *see also* generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009); *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014); *Rylan M. v Dover Area Sch. Dist.*, No. 1:16-CV-1260, 2017 U.S. Dist. LEXIS 70265 (M.D. Pa. May 9, 2017). Neither of the two witnesses presented credibility issues although their interpretation of the events differed.

Settlement Agreements and Contracts

A contract is a legally binding agreement between parties creating obligations that are enforceable or otherwise recognizable at law.⁴ In order for a party to be bound by an agreement there must be a mutual manifestation of intent to be bound, i.e., a “meeting of the minds”.⁵ To be enforceable a settlement agreement must contain all the necessary elements of a contract.⁶ In general and in Pennsylvania there are three essential elements to a contract that must all be present for a court to find a contract to be legally enforceable: (1) offer, (2) acceptance, and (3) consideration.⁷

An Offer may be either written or spoken, or implied by action.⁸ An Offer is defined under the Restatement (Second) of Contracts as the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it.⁹ Generally, an Offer must sufficiently establish the subject matter that the contract will be based upon, and properly describe the parties to be bound.¹⁰ An Offer does not have to state every element of the contract, but it must set forth the essential terms of the contract sufficiently for a *reasonable person* to be able to understand what the Offer is intended to be.¹¹ An Offer cannot be accepted so as to form a contract unless the terms of the contract are

⁴ *Black’s Law Dictionary*, 8th Ed., (2004).

⁵ *E.g.*, *Courier Times, Inc. v. United Feature Syndicate, Inc.*, 445 A.2d 1288, 1295 (Pa. Super. Ct. 1982).

⁶ *Mazzella v. Koken*, 739 A.2d 531, 536 (Pa. 1999).

⁷ *Schreiber v. Olan Mills*, 627 A.2d 806, 808 (Pa. Super. Ct. 1993) (it is axiomatic that before a contract may be found, *all* of the essential elements of a contract must exist).

⁸ *Northern Penna. Legal Servs., Inc. v. Lackawanna Cnty.*, 513 F. Supp. 678, 683 (M.D. Pa. 1981).

⁹ RESTATEMENT (SECOND) CONTRACTS §24.

¹⁰ *Detwiler v. Capone*, 55 A.2d 380, 385 (Pa. 1947).

¹¹ RESTATEMENT (SECOND) CONTRACTS §33.

reasonably certain.¹² A fundamental principle of contract law is that the party proposing the Offer cannot suppose, believe, suspect, imagine or hope that an Offer has been made.¹³ An Offer must be communicated to the offeree in an intentional [and] definite manner.¹⁴ In Pennsylvania, if the party seeking to prove the existence of a contract does not show that a distinct Offer was made, then there is no contract.¹⁵

Acceptance may be explicit or implicit. While not all terms need be expressed in an Offer or the Acceptance, the contract must be clear enough so that a reasonable person would understand what they were agreeing to, and such clarity is particularly important where an oral contract is alleged.¹⁶

Consideration is an act, forbearance, or return promise bargained for and given in exchange for the original promise. Consideration demands some form of quid pro quo given in response to the Offer.

Discussion

Special education due process hearing officers have authority to decide issues relating to a proposed or refused initiation of, or change in, a child's identification, evaluation, or educational placement; or the provision of a free, appropriate public education (FAPE) to a child, under the IDEA. 20 U.S.C. § 1415(f); 34 C.F.R. §§ 300.503, 300.507, 300.511; 22 Pa. Code §§ 14.101 – 14.163.

Courts that have considered the authority of a hearing officer regarding a settlement agreement appear to concur that, to the extent the agreement relates to the provision of FAPE, the document may be reviewed and considered by a hearing officer for specific purposes. For example, hearing officers may decide if an enforceable agreement exists. In *IK, ex rel. B.K. v. School District of Haverford Township*, No. CIV-A 10-4397 (E.D. Pa., filed March 21, 2011), 2011 WL 1042311, the Eastern District speaking through Judge Stewart Dalzell reasoned that it is within the jurisdiction of a hearing officer to determine whether a settlement agreement exists. See also *A.S. v. Office for Dispute Resolution (Quakertown Community School District)*, 88 A.3d 256, 263 (Pa. Commw. 2014)

However, case law is also clear that hearing officers are not permitted to enforce settlement agreements. "Enforcement of a settlement agreement may determine if parents have waived certain rights under the IDEA, or whether an LEA has contracted to provide certain benefits above those that the IDEA requires, but it is not related to the fundamental question of whether a 'child received a free appropriate public education.' Enforcing a settlement agreement thus

¹² *Id.*

¹³ *Morosetti v. Louisiana Land & Exploration Co.*, 564 A.2d 151, 152 (Pa. 1989).

¹⁴ *Id.*

¹⁵ *Reed v. Pittsburgh Bd. of Pub. Educ.*, 862 A.2d 131, 135 (Pa. Commw. Ct. 2004) (citing REST §33).

¹⁶ *Pennsy Supply, Inc. v. Am. Ash Recycling Corp. of Pa.*, 895 A.2d 595, 600 (Pa. Super. 2006).

appears to exceed the authority that the IDEA confers upon a hearing officer. *J.K. v. Council Rock School District*, 833 F. Supp. 2d 436, 448-49 (E.D. Pa. 2011).

The Parent bases her belief that there is no agreement on two points: 1) that the District's representative may not have signed the agreement on the date that is on the agreement; and 2) that the Resolution Meeting Data Form indicates that a Partial Agreement was reached. These arguments are unavailing. 1) There is documentary evidence that the Special Education Director for Neighborhood Network 3 signed and returned the agreement, which already had the Parent's dated signature on it, on February 15, 2018; 2) Resolution Meeting Data Forms are not part of settlement agreements in individual cases; they are used solely as a means of ODR's aggregate data collection during the fiscal year. Although the form could more accurately have noted that a full agreement had been reached, rather than that a partial agreement had been reached, the form itself has no bearing on whether or not an agreement exists. The Parent's confusion on this point is understandable; however it is noted that she also specifically and separately stated in her email returning the signed agreement that, "Everything appears to be in Order with the Resolution Agreement form you attached."

Based upon the evidence the parties presented on the limited issue addressed in this hearing I conclude that a valid settlement agreement between the parties exists given that there was an Offer, Acceptance, and Consideration.

The Offer: At the February 12, 2018 resolution meeting, the parties came to an agreement. The written agreement was mailed to the Parent on February 14, 2018. [S-3, P-1]

Acceptance: The Parent signed, dated, and returned the settlement agreement by email to District counsel on February 15, 2018. In her email the Parent referenced the signed agreement and the resolution meeting form and noted her appreciation of the District's assistance.

The Director of Special Education of Neighborhood Network Three signed, dated, and returned the agreement to District counsel on February 15, 2018.

The Parent did not verbally or in writing rescind her acceptance of the settlement agreement within three days of signing it.

Consideration: The settlement agreement contains quid pro quo clauses addressing each party's obligations.

Insofar as the Parent alleges that the District has breached the agreement, this hearing officer lacks the authority to enforce settlement agreements.

Order

It is hereby ordered that:

A valid settlement agreement exists between the parties.

The Parent's due process complaint is dismissed.

Any claims not specifically addressed by this decision and order are denied and dismissed.

Linda M. Valentini, Psy.D., CHO

March 19, 2018

Linda M. Valentini, Psy.D. CHO
Special Education Hearing Officer
NAHO Certified Hearing Official