

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

TUSTIN UNIFIED SCHOOL DISTRICT  
AND ORANGE COUNTY HEALTH  
CARE AGENCY.

OAH CASE NO. 2011020391

ORDER GRANTING IN PART AND  
DENYING IN PART ORANGE  
COUNTY HEALTH CARE AGENCY'S  
MOTION TO DISMISS

On August 29, 2011, counsel for Orange County Health Care Agency (OCHCA) filed a motion to dismiss OCHCA as a party to this complaint. Student did not file an opposition to OCHCA's motion. During the scheduled pre-hearing conference conducted on August 31, 2011, counsel for Tustin Unified School District (District) concurred with the tentative ruling of ALJ Judith L. Pasewark, as finalized and ordered as follows:

APPLICABLE LAW

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc.....), special education law does not provide for a summary judgment procedure.

On October 8, 2010, Governor Arnold Schwarzenegger signed the final State Budget bill in which he vetoed \$132.9 million of funding to reimburse counties for their costs for complying with Chapter 26.5 services (AB 3632), including suspension of the mandate on counties to provide these mental health services for the 2010-2011 fiscal year. The Court of Appeal, Second District, held that the Governor's October 2010 veto created an unfunded mandate and freed local mental health agencies from the requirement to implement AB 3632 for the 2010-2011 fiscal year. (*California School Boards Assoc., et al. v. Edmund G. Brown, et al.* (2011) 192 Cal. App.4th 1507, 1515, 1516.)

DISCUSSION

1. Student's Issue 8 states that on March 19, 2010, Parents signed an assessment plan for an OCHCA referral for AB 3632/882 assessments, and that between March 2010 and October 6, 2010, OCHCA failed to provide Parents with a copy of the OCHCA

assessment two days prior to the June 11, 2010 IEP meeting, failed to meet with Parents to correct statements in the report that are allegedly not factual, and distributed the report in its original format to the District without parental consent. As a result, Student contends that Student remains without mental health services from OCHCA, resulting in a denial of educational benefit to Student. OCHCA argues that the Governor's veto of AB 3632 funding discharges OCHCA of any legal duty to Student under AB 3632. Student's allegations in Issue 8, however, occurred between March 19, and October 6, 2010, a period prior to the Governor's veto of funding on October 8, 2010, and are not exempt from challenges in a due process hearing. Furthermore, OCMHA's motion as it applies to Student's Issue 8, is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits. Accordingly, the motion as to Student's Issue 8 is denied.

2. Student's Issue 10 alleges that OCHCA failed to attend Student's March 11, 2011 IEP meeting, and Student was denied a free appropriate public education due to their non-attendance. OCHCA's non-attendance at the March 11, 2011 IEP meeting occurred after the Governor's veto of AB 3632 funding. As of October 8, 2010, OCHCA had no further legal duty to Student under AB 3632. Accordingly, Student's Issue 10 is dismissed

#### ORDER

1. OCHCA's request to dismiss Student's Issue 8 is denied.
2. OCHCA's request to dismiss Student's Issue 10 is granted.
3. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: August 31, 2011

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings