BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FULLERTON JOINT UNION HIGH SCHOOL DISTRICT & ORANGE COUNTY HEALTH CARE AGENCY.	OAH CASE NO. 2010110268 ORDER DENYING DISTRICT'S MOTION TO DISMISS

On November 4, 2010, Student filed a due process hearing request (complaint) naming Fullerton Joint Union High School District (District) and Orange County Health Care Agency (OCHCA) as respondents. The complaint alleged five issues for hearing as to District and one issue as to OCHCA. The sole issue as to OCHCA (Issue Five) was whether OCHCA did not perform its duty to search for and offer a residential placement for Student. As to the other five issues, they allege District denied Student a FAPE by not making a timely referral to OCHCA for assessment and not offering Student an appropriate placement and related services at IEP team meetings held in August and November of 2010. Two issues (Issues Two and Three) allege that assessment plans signed in June of 2010 were not timely completed. As remedies, Student asked for, in relevant part, reimbursement for parental expenses in both the 2009-2010 and 2010-2011 school years.

On November 5, 2010, OCHCA filed a response to the complaint. In it, OCHCA stated its belief that OAH had no jurisdiction over it because OCHCA had been relieved of the duty to provide mental health services by the Governor's October 8, 2010 veto of AB 3632 funding, and a subsequent plan to fund services by the California Department of Education (CDE). This statement can be construed as a motion to be dismissed as a party, which will be addressed by a separate order. On November 10, 2010, District filed an opposition to OCHCA's motion to be dismissed as a party. In the opposition, District takes the position that the Governor's veto was unlawful, and that even so, any alternative funding mechanism undertaken by CDE would still involve the participation of agencies like OCHCA.

On November 12, 2010, District filed a motion to dismiss issues. In particular, District argues that some issues are barred by a settlement agreement dated August 12, 2010. District argues that OAH does not have jurisdiction over the remedy request related to the 2009-2010 school year, as well as Issues Two and Three, regarding completion of assessments that parent agreed to in June of 2010. District also contends that OAH lacks jurisdiction over claims regarding residential treatment center placement because one clause of the settlement agreement could be read to relieve District of any duty to provide

residential treatment center services unless recommended by OCHCA. District did not support its motion with declarations or any evidence of the settlement agreement's authenticity. No opposition was received. As discussed below, District's motion is denied.

Analysis

District contends that the language of a settlement agreement signed by Student on August 12, 2010 deprives OAH of jurisdiction over issues pre-dating the execution of the settlement agreement and over Student's allegations that District deprived him of a FAPE by not providing a residential placement. In particular, District argues that the settlement agreement contains a waiver of all past known or unknown claims. District further contends that language in the settlement agreement under which Student prospectively agreed that District would not be responsible for funding a residential treatment center placement unless recommended by OCHCA bars a hearing on issues alleging District deprived Student of a FAPE by not providing a residential treatment center. As discussed below, dismissal of issues for lack of jurisdiction is not warranted.

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has 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); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) 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.)

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.

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits that requires factual determinations. Specifically, Student asks that prior to hearing OAH determine the authenticity of the settlement agreement and interpret it as a jurisdictional bar to proceeding. However, to do so would require resolution of the authenticity and validity of the settlement agreement, which is a factual question that should be resolved at hearing.

Moreover, even if authentic and interpreted as District suggests, Issue Two and Three would not be entirely barred because they allege that assessments that were agreed to in June of 2010 were not timely completed. As to the Issue Three speech assessment, it is alleged that the plan was signed on June 20, 2010 and not completed within 60 days, meaning that even if a full waiver of past claims was executed on August 12, 2010, the waiver may not have included the expiration of the 60 days. This occurs because, as District fails to acknowledge in its motion, the IEP must be held within 60 days, and the 60 day period may be tolled when school is out of session for more than five days, like over the summer. (See Ed. Code, § 56341, subd. (f)(1).) Similarly, as to Issue Two, even if a waiver of past claims was executed on August 12, 2010, the time to conduct a mental health assessment following a June 4, 2010 request by Student likely had not expired by the date of the waiver, and even so, requires a factual determination. The school district must schedule an IEP team meeting pursuant to Education Code section 56344 within 50 days from the mental health agency's receipt of the parent's written consent to the mental health assessment (Cal.Code Regs.,tit. 2, § 60045, subd. (d)). The 50-day time period for convening an IEP meeting does not include school vacations in excess of five school days. (Ed. Code, § 56344, subd. (a).) If the referral for an assessment has been made 20 days or less prior to the end of the regular school year, the IEP developed as a result of that assessment shall be developed within 30 days after the commencement of the subsequent regular school year. (*Ibid.*) District's motion fails to address the basic factual predicates of when did the OCHCA receive the referral, whether it was within 20 days of the end of the regular school year, and when the IEP should have been held. District's motion to dismiss Issues Two and Three fails on this basis as well. District's motion simply cannot be granted prior to hearing because to do so requires resolution of numerous factual issues.

Similarly, dismissal of the claim regarding residential placement is not warranted. First, as discussed above, District did not prove in its motion that the settlement agreement is authentic. Second, and more importantly, there is a factual question regarding the validity of the clause District relies on to bar residential treatment center issues. The Governor's veto of AB 3632 funding and the response of agencies like OCHCA are an event that could not have been foreseen at the time the settlement agreement was signed. In its November 10, 2010 opposition to OCHCA's motion to be dismissed as a party, District takes the position that despite the veto, OCHCA is still a party with responsibility to implement AB 3632 referrals. Thus, the uncertainty of the implications of the Governor's veto renders it unfair to deprive Student of an opportunity to develop a factual record at hearing regarding the implications for interpretation and implementation of the settlement agreement. Accordingly, District's motion to dismiss is denied on this ground as well.

ORDER

District's Motion to Dismiss Issues is Denied.

Dated: November 18, 2010

/s/

RICHARD T. BREEN
Administrative Law Judge
Office of Administrative Hearings