

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SAN MATEO UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2011031447

ORDER TO SHOW CAUSE WHY
MATTER SHOULD NOT BE
DISMISSED

On March 24, 2011, Student filed a request for due process hearing (complaint). On April 27, 2011, the parties participated in mediation. On May 3, 2011, the Office of Administrative Hearings (OAH) was informed that the parties had entered into a final settlement agreement, pending approval by the San Mateo Union High School District's Board (District's Board). Subsequently, OAH was informed that District's Board had approved the settlement agreement.

On June 15, 2011, a telephonic status conference (TSC) was held in this matter. OAH was informed that the parties could not dismiss the matter because the settlement agreement required approval of the San Mateo County Superior Court (Superior Court), as Student was over the age of 18 and under a conservatorship. On August 24, 2011, another TSC was held and the parties were unable to verify to OAH whether the Superior Court had approved the settlement agreement. OAH was informed that District had begun complying with the terms of the agreement.

Further TSCs were held on August 31, and September 14, 2011. OAH was informed that while the Superior Court had approved the settlement, the order required the parties to maintain this action until 2012, when District was to finish complying with the final terms of the settlement agreement. On September 16, 2011, OAH issued an order asking the parties to file a copy of the Superior Court's order with OAH. On September 30, 2011, Student filed a copy of the Superior Court's June 10, 2011 order.

APPLICABLE LAW, DISCUSSION AND ORDER

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.)

If the parent, or pupil who is 18 years or older, and local education agency have not resolved the due process complaint within 30 days of the receipt of the complaint, OAH is required to issue a decision within the next 45 days, unless a continuance is granted for good cause. (20 U.S.C. § 1415(f)(1)(B)(ii); 34 C.F.R. § 300.51; Ed. Code, § 56502, subd. (f).)

Here, the parties entered into a final settlement agreement on April 27, 2011, subsequently approved by the District's Board and the Superior Court. Accordingly, there is no longer a live dispute pending before OAH.

Furthermore, Student's representation that the June 10, 2011 Superior Court order prevents Student from dismissing this action is not supported by the order. The June 10, 2011 Superior Court order states that the court approved the settlement agreement between the parties. It provides further orders on how a special needs trust must be established and funded. It does not order Student to continue maintaining the action before OAH until 2012 and through the final execution of terms set out in the settlement agreement between the parties.

To the extent that the parties may have set forth a term in their settlement agreement that required Student to maintain this action, OAH does not have a copy of the settlement agreement. Regardless, there is no legal authority that would give OAH jurisdiction to monitor parties as they carry out the terms of their settlement agreement or to enforce settlement agreements should parties fail in their duties.

Therefore, the parties are ordered to show cause why this case should not be dismissed based upon a full and final settlement agreement between the parties, which OAH does not have jurisdiction to monitor. Parties shall file any responses and supporting declarations with OAH no later than October 14, 2011. The parties will be notified if OAH desires to have a further TSC on this matter.

IT IS SO ORDERED.

Dated: October 4, 2011

/s/

BOB VARMA
Presiding Administrative Law Judge
Office of Administrative Hearings