BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: STUDENT, v. BREA-OLINDA UNIFIED SCHOOL DISTRICT.	OAH CASE NO. 2014010376 ORDER GRANTING WITHOUT PREJUDICE REQUEST TO DISMISS COMPLAINT OF STUDENT'S TEMPORARY CONSERVATOR

On January 13, 2014, Student filed a request for due process (complaint) naming the Brea-Olinda Unified School District (District). Student is over the age of 18. At the time he filed his complaint, he was attending Devereuex, a residential treatment center in Colorado funded by the District pursuant to Student's individualized education program.

On February 28, 2014, Student's mother filed a request to dismiss Student's complaint, based upon the fact that she had been named the temporary conservator for Student, which included the right to make educational decisions for him. Mother did not want the instant case to proceed. Mother attached a copy of the Superior Court letters of conservatorship to substantiate her request. However, because there was no indication that Mother had served Student or his attorney with her request, the Office of Administrative Hearings (OAH) served Mother's papers on counsel for Student on March 6, 2014.

On March 5, 2014, the District filed a notice of non-opposition to Mother's request for dismissal.

On March 11, 2014, counsel for Student filed a response to Mother's request on behalf of Student. In the response, counsel contests the bases of Mother's temporary conservatorship. She also states that it appears Student is no longer attending Devereuex, and that she has been unable to communicate with him despite many attempts to do so. Counsel asks that this matter be continued until after April 1, 2014, when a superior court hearing is scheduled concerning the appointment of a probate conservator for Student.

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.) OAH does not have jurisdiction to determine the propriety of a court order placing an individual under conservatorship.

As of now, Mother is Student's conservator and has been given the sole right to make educational decisions for him. She does not wish to proceed with this case and has requested, on Student's behalf, to dismiss it. Mother has the authority to do so as Student's conservator. Therefore, Mother's request for dismissal of this case is granted without prejudice.

IT IS SO ORDERED.

DATE: March 12, 2014

/s/
DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings