BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. FILLMORE UNIFIED SCHOOL DISTRICT.	OAH Case No. 2018020337 ORDER DENYING MOTION TO DISMISS

On February 7, 2018, Student filed a complaint asserting that a December 2017 manifestation determination was procedurally insufficient and substantively in error, rendering Student's subsequent expulsion subject to reversal. The matter is scheduled for expedited hearing on March 6, 2018.

On February 21, 2018, District filed a motion to dismiss, generally asserting that District and Parent entered into a waiver agreement whereby Student and Parent relinquished any right to contest the expulsion recommendation, as specified in the agreement. On February 26, 2018, Student filed Opposition to District's Motion to Dismiss, with objections to the declarations submitted in support of District's motion.

On February 26, 2018, Administrative Law Judge Clifford H. Woosley convened the prehearing conference and heard oral argument from both parties on District's motion to dismiss.

APPLICABLE LAW

Parents of a child with a disability, who disagree with the any decision regarding placement or the manifestation determination, under 20 U.S.C., section 1415, subsection (k), may request an expedited hearing on appeal. (20 U.S.C. § 1415(k)(3).)

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. Further, federal and state special education law reserves the weighing of evidence and findings of fact for the due process hearing and decision.

DISCUSSION

District asserts that Parent entered into a waiver agreement whereby Student and Parent relinquished any right to contest the expulsion recommendation. District therefore

contends that Student and Parent are barred from filing and pursuing an expedited appeal from the December 2017 manifestation determination. In support, District submitted declarations of Mary Williams and Trina Tofoya, with 33 pages of exhibits, including: Student's most recent IEP; December 4, 2017 Attendance Agreement (English and Spanish); Notification of Administrative Suspension; Waiver of Expulsion/Administrative Hearing (English and Spanish); Parent Request to Waive 10 Day Notice (English and Spanish); District's Findings of Fact, Conclusion of Law and Recommendation for Expulsion; Motion Following Deliberations (with approval by District's Board of Education); December 20, 2017 Notice of Expulsion (English and Spanish); December 5, 2017 Notification to Parents re Recommendation for expulsion (English and Spanish); December 4, 2017 Extension of Suspension Meeting checklist (English and Spanish); and December 4, 2017 Extension of Suspension Pending an Expulsion Hearing (English and Spanish).

In opposition, Student asserts that the waiver agreement did not include a waiver of Student's rights under the IDEA, including the ability to challenge the manifestation determination. Student also filed objections to both declarations submitted in support of District's motion, specifying each objection with a reference to the line, statement, and Evidence Code violation. Basically, Student states that District's contention requires a hearing and may not be determined on motion.

District has proffered substantial evidence by way of declaration and documents. Much of District's documentary evidence relate to notice and parental participation in the expulsion process and, therefore, the enforceability of a knowing waiver. None of the evidence addresses Student's waiver of any rights under IDEA. Since the expulsion waiver does not include a specific waiver of Student's right to appeal a manifestation determination, an evidentiary hearing is necessary to enable the ALJ to make informed factual findings that may be utilized in issuing a decision.

Here, District's supporting declarations and documentary evidence demonstrate that its motion seeks a determination on disputed factual issues. Factual disputes shall be determined at an evidentiary hearing, not a motion to dismiss. The motion is denied.

ORDER

1. District's motion to dismiss Student's complaint is denied.

2. The expedited hearing shall proceed as scheduled.

DATE: February 26, 2018

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CLIFFORD H. WOOSLEY
Administrative Law Judge
Office of Administrative Hearings