

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

ORANGE COUNTY HEALTH CARE
AGENCY.

OAH CASE NO. 2011020211

DECISION

Eileen M. Cohn, Administrative Law Judge, Office of Administrative Hearings (OAH), heard this matter in Irvine, California, on March 30, 2011.

Advocate Jillian Bonnington represented Student. Student's co-advocate Tim Runner was present for part of the hearing. Student's Mother and Father (collectively, Parents) attended the hearing.

Orange County Health Care Agency (OCHCA) did not appear at the hearing.

On February 4, 2011, Student filed her Request for Due Process (complaint). On February 10, 2011, OCHCA made a "special appearance" in response to Student's complaint to challenge OAH's jurisdiction over it, based on the suspension of funding for the mandate authorizing OCHCA to provide mental health services to special education students, as a result of former Governor Schwarzenegger's line-item veto on October 8, 2010. As such, OCHCA advised that it would not be attending the due process hearing. OCHCA's response also addressed the allegations set forth in Student's Complaint and attached documents in support of its response.

Sworn testimony and documentary evidence were received at the hearing. At the conclusion of the hearing, Student was granted permission to file a closing brief by April

15, 2011. On April 7, 2011, the ALJ issued a letter ordering the Student to discuss in her closing brief, among other things, a recent published decision of the California Court of Appeal, *California School Boards Ass’n, v. Edmund G. Brown, Jr., Governor* (2011) 192 Cal.App.4th 1507 [122 Cal. Rptr.3d 674] (*School Boards*).¹ In *School Boards*, the Court addressed the constitutionality of the Governor’s line-item elimination of funding for state mandated special education related services provided by local mental health agencies. On April 13, 2011, the ALJ issued an additional letter ordering the Student to supplement the record with several documents to which Student’s expert referred during the course of the hearing, as well as documents relevant to a determination of OCHCA’s duty, independent of Student’s school district, to provide services to Student.

Student timely filed her closing brief on April 15, 2011, and submitted additional exhibits, supplementing the record.² OCHCA also timely filed a closing brief addressing *School Boards*. Upon receipt of the closing briefs and after admitting the additional exhibits, the record was closed.

¹On April 6, 2011, California School Boards Association, et al., filed a Petition for Review with the California Supreme Court (S191952). *School Boards, supra*, 192 Cal.App.4th 1507, retains its status as published authority until and unless the California Supreme Court grants the Petition for Review, or orders *School Boards* de-published. (Cal. Rules of Court, rules 8.1105(e) and 8.1115(d).)

²The exhibits were marked and admitted.

ISSUES³

1. Whether OCHCA denied Student a free and appropriate public education (FAPE) as a special education related mental health service provider by failing to develop an appropriate service plan and goals after conducting a Chapter 25.6 assessment on August 9, 2010.
2. Whether OCHCA denied Student a FAPE as a special education related mental health service provider by failing to evaluate Student and recommend a therapeutic educational setting at the time of the September 22 and October 7, 2010 Individualized Education Program (IEP) team meetings.
3. Whether OCHCA failed to provide Student a FAPE by failing to attend the October 7, 2010 IEP team meeting.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. At the time of the hearing Student was 14 years old and in eighth grade. At all relevant times Student lived within the boundaries of the Tustin Unified School District (Tustin). As further set forth herein, through October 8, 2010, OCHCA was the mental health care agency under contract with Tustin to provide related mental health services to special education pupils pursuant to Chapter 26.5 of the Government Code, entitled "Interagency Responsibilities for Providing Services to Children with Disabilities" (Chapter 26.5). OCHCA's Chapter 26.5 responsibilities were sometimes also referred to as AB 3632 obligations after the legislation that directed the California Department of

³The issues were determined at the prehearing conference, and, at hearing, the ALJ further clarified Issue Two consistent with language set forth in Student's complaint.

Mental Health, through its affiliated local agencies, to provide school districts, like Tustin, related mental health services to eligible special education pupils.

2. In June 2008, Student became a patient of clinical psychologist Caroline Paltin, Ph.D., to address Parents' concerns regarding Student's socially inappropriate conduct, difficulties with peer relations, anger and general unhappiness. On June 28, 2008, Dr. Paltin conducted an independent psychological assessment of Student and began meeting with her weekly.

3. On November 3, 2008, Tustin held an initial IEP team meeting, at which time the IEP team determined that Student, who has Asperger's Syndrome, was eligible for special education as a pupil with autism.

4. During the 2009-2010 school year, when Student was in seventh grade, Parents privately placed Student at New Vista Academy (New Vista), a private school specializing in pupils with Asperger's Syndrome. New Vista provided small classes and social skills instruction. During her time at New Vista, between December 2009 and March 2010, Student was hospitalized approximately four times for suicidal ideations and cutting herself. On one occasion, police were called to campus after she was observed trying to cut herself with a paperclip. Student was asked to leave New Vista the first week of May 2010, due to allegations of stalking, cyber-bullying and physical aggression.

5. On May 6, 2010, Parents requested Tustin to develop an IEP for Student. On May 12, 2010, Parents enrolled Student in Tustin.

6. During the 2009-2010 school year, Student continued as a patient of Dr. Paltin to address her emotional, social and behavioral problems.

THE MAY, AUGUST AND OCTOBER IEP TEAM MEETINGS

7. On May 17, 2010, Tustin held the requested IEP team meeting. Dr. Paltin attended the IEP team meeting and reported on Student's recent psychiatric hospital

admissions, her suicidal ideations, self-injurious conduct and aggressive behaviors. Dr. Paltin provided the IEP team with her June 28, 2008, assessment report. Parents requested placement in a therapeutic day treatment nonpublic school (NPS). Tustin considered school counseling services, but determined that Student's mental health needs were beyond the scope of school counseling, and referred Student to OCHCA to ascertain whether she qualified for mental health services from OCHCA. Parents consented to the referral and executed the required consent forms.

8. After the May 17, 2010 IEP team meeting, Parents signed an assessment plan for a functional behavior assessment (FBA), an adapted physical education assessment, and an occupational therapy assessment. However, Tustin did not conduct or complete these assessments prior to the completion of OCHCA's assessments, which occurred on August 9, 2010.

9. Prior to the completion of OCHCA's mental health assessment, Tustin held several IEP team meetings. Specifically, on May 25, 2010, Tustin held an IEP team meeting where it offered placement in a special day class (SDC) at a Tustin middle school. Student began attending school on May 26, 2010. On June 11, 2010, District held another IEP team meeting where it agreed to mainstream Student for English and also provide extra classroom support during Student's school day.

10. After Tustin's referral to OCHCA, Dr. Paltin attempted to contact the OCHCA psychologist responsible for conducting Student's assessment on several occasions, without success. Dr. Paltin wanted to make sure that the psychologist had the most recent information about Student's mental health status, particularly her suicidal ideations and hospitalizations.

11. On August 9, 2010, OCHCA completed its mental health assessment. The assessment was performed by OCHCA's clinical psychologist, Pamela I. Berg, Ph.D. In preparing her report, Dr. Berg reviewed Student's school records, including the IEPs

dated May 17 and June 11, 2010, and Student's most recent psychoeducational evaluation dated November 2, 2008. Dr. Berg also reviewed Dr. Paltin's independent assessment dated June 26, 2008, a letter prepared by her treating physician at the University of California at Irvine Medical Center dated March 1, 2010, and a report from New Vista School dated May 13, 2010, entitled "Anecdotal Data Report." Dr. Berg also interviewed Student and her mother. She did not interview Dr. Paltin. Dr. Berg reported that she tried to contact Dr. Paltin several times without success.

12. Dr. Berg reported that Student was referred to OCHCA under Chapter 26.5 at Parents' request due to her socially inappropriate conduct, anger, aggression, and self-injurious behavior (cutting). She reported the concerns and comments of Student's mother. Mother wanted to keep Student in school, but acknowledged that "(s)he hates school no matter where we put her." Mother noted that Student was abrasive with others, without meaning to be, displayed excessive anger in reaction to situations, and that her painful awareness of how different she was from her peers had been a source of past suicidal ideations. Mother told Dr. Berg that Student had been depressed since the end of sixth grade, and she had been on a variety of psychiatric medications that had been unsuccessful in ameliorating her depression, but may have had the opposite effect, including making her anxious. Mother informed Dr. Berg that Student's psychiatrist had recently discontinued all of Student's medications. Mother reported that Student had not mentioned killing herself since her psychiatric medication was discontinued. Mother stated that she was happy with Student's current psychologist, Dr. Paltin, and wanted Student to continue receiving therapy from her. Mother also reported that in addition to seeing Student receiving treatment from Dr. Paltin and a psychiatrist, Student participated in an Asperger's support group on a monthly basis.

13. Dr. Berg reported the results from Dr. Paltin's June 2008 assessment. From Dr. Paltin's report she learned that Parents referred her to Dr. Paltin due to their

concerns about her socially inappropriate conduct, difficulties getting along with other children, anger, and general unhappiness. Dr. Paltin concluded that Student's behavioral, social and communicative impairments were indicative of a child with moderate Asperger's Syndrome, an impulse control disorder, and "possibly" a mood disorder.

14. Dr. Berg reviewed Student's educational history at New Vista. She also reviewed information concerning Student's hospitalizations during that time. Specifically, she reviewed the report of her treating doctor at University of California at Irvine Medical Center, who recorded that Student had interpersonal difficulties, marked inability to read social cues and reciprocate social responses, low frustration tolerance, poor coping skills, difficulty with emotional self-regulation, irritability, anger, and hopelessness. The doctor concluded that the "diagnosis of Asperger's more than adequately account[ed] for the difficulty she has."

15. Dr. Berg met with Student. Student denied current suicidal ideations, but admitted previous self-injurious behavior "to get away from school" and because she was "mad about getting kicked out of New Vista." She did not want to go back to the Tustin school. She said that attending Tustin after being in private school all her life was "too much of a shock," and she threatened to burn down the school or poison the teacher's coffee if she was required to return.

16. Dr. Berg was not convinced that mental health services would be effective for Student. She considered Student's diagnosis of Asperger's Syndrome, weekly psychotherapy from Dr. Paltin, and history of medication, and concluded that "despite these interventions," Student continued to have significant difficulties in the areas of social relationships, impulsivity and regulating her own emotions. Consequently, she recommended a six-month trial of Chapter 26.5 services to determine whether these services would help improve Student's ability to succeed at school. The six-month trial included twice monthly, 45-minute individual sessions; once monthly, 30 minutes of

family psychotherapy; and 15 minutes monthly for case management, including, teacher consultation.

17. Pursuant to OCHCA protocol, Dr. Berg attached a proposed client service plan to her assessment for Parents' review and signature. The client service plan was provided in a column format, and included Student's baseline mental health symptoms and behaviors resulting in impairments, her treatment goals, short term objectives or milestones, a statement of service frequency and type (e.g., individual, family), responsible persons, and evaluation criteria. In the baseline behaviors column, Dr. Berg described Student's problems regulating her emotions and expressing anger appropriately, which resulted in situations where she had been perceived as threatening or bullying others. Student's behaviors left her "unable to remain in a stable educational environment." As a treatment goal, Student would develop age-appropriate anger management skills. Short term treatment objectives included increasing Student's demonstrative ability to: verbally identify the onset of feelings of anger, and situations which cause anger; identify three appropriate ways to handle her anger (e.g., verbalization, journaling, physical exercise); and to implement these alternatives. The client service plan required Student to identify her feelings of anger within three months of the anticipated start of service and implement appropriate ways of responding to anger within six months of the anticipated start of service.

18. On August 17, 2010, the IEP team met to discuss Dr. Berg's OCHCA assessment, and to amend the IEP dated May 17, 2010, based upon Dr. Berg's recommendations. Dr. Berg presented her assessment to Tustin and Parents. Dr. Berg determined that Student was eligible for mental health services under Chapter 26.5, and recommended two, 45-minute sessions monthly of individual therapy, and one 30-minute session monthly of family therapy, and one 15-minute session monthly for case management. OCHCA's recommended services were included in the amended IEP. The

services would be provided by an OCHCA designated psychologist at the psychologist's office. Tustin IEP team members advised Parents that they must sign OCHCA's client service plan before services could begin. Parents did not sign OCHCA's client service plan.

19. At the IEP team meeting, Parents requested a change of placement to a different school, as well as training for an aide to shadow Student. Parents expressed concern for Student's safety and the safety of other pupils at Student's then current Tustin placement.

20. On September 10, 2010, Student's co-advocate, Tim Runner, sent a letter to OCHCA regarding its assessment and proposed service plan. In his letter, Mr. Runner advised OCHCA that Dr. Paltin diagnosed Student with Asperger's Syndrome and mood disorder with thought disorder features and sensory reactive issues. He questioned the absence of any diagnosis in OCHCA's assessment other than moderate Asperger's Syndrome. He requested Dr. Berg's diagnosis and OCHCA's proposed master treatment for Student. He questioned OCHCA's recommendations for 90 minutes a month of therapy, when Student had historically received therapy once a week in 60 minute sessions. Mr. Runner challenged the comprehensiveness of OCHCA's assessment. In doing so, he referenced the information provided to OCHCA by Tustin in its Chapter 26.5 referral, which identified Student's socially inappropriate conduct, anger, bullying, aggression, and self-injurious behavior. Mr. Runner also referenced Student's most recent IEP where the team acknowledged Student's need for extra classroom support to ensure her safety. In view of the Student's identified deficits, Mr. Runner requested additional goals to address Student's impairment of social interactions, impairment due to sensory integration issues, non-compliance with authority, mood disorder, and self-mutilation.

21. On September 14, 2010, Student threatened to kill herself in the Tustin school bathroom by hanging herself with her shoelaces. After September 14, 2010, Student did not return to the Tustin school. The next day, Dr. Paltin forwarded a letter to Tustin recommending that Student refrain from attending school due to safety concerns. Also on that day, Student's advocate provided Tustin with a ten-day notice and request for reimbursement for a unilateral school placement.

22. In response to Parents' request, Tustin convened an IEP team meeting on September 22, 2010. Parents, Dr. Paltin and Dr. Berg were among the attendees. Student's social-emotional development was discussed. The IEP team reported that Student had trouble making friends and working with peers. Student was verbally abusive toward staff and peers, even when unprovoked, attempted to bully others, and used profanity and crude remarks. Dr. Paltin advised that Student's diagnosis of a mood disorder, which she specified as mood disorder not otherwise specified (NOS), along with her Asperger's, presented as lack of impulse control, irritability, self-abuse and aggression. Dr. Paltin advised that Student required interventions for social skills, mood disorder (NOS), and anxiety. She advised that Student was afraid of making mistakes, being embarrassed, or being rejected, and that Student's perceptions of peer interactions were distorted. Also, Dr. Paltin expressed that it was important to reduce Student's stress, and opined that a classroom setting caused Student's fear, anger and anxiety. She reported that Student was concerned with crowds following a schedule, following classroom and social conversations, peer interactions, and tactile issues in physical education. She questioned whether Student could be kept safe from harming herself in any classroom setting. At the IEP team meeting, Parents reported a decline in one aspect of her self-abusive behavior, cutting.

23. The IEP team agreed that Student's behavior and social-emotional issues impacted school performance. The IEP noted that Student's diagnoses of Asperger's

Syndrome and mood disorder (NOS) affected her ability to make progress in general education classes. The IEP team developed several goals and objectives to address Student's social-emotional issues, including three social pragmatic skills goals to address her expression of opinions, thoughts, and feelings to peers and school staff; off-topic comments; and her difficulty transitioning to non-preferred activities by shutting down and becoming non-responsive. Student's speech and language pathologist (SLP) and teacher were responsible for working with Student on all three goals. In addition to the SLP and teacher, Student's occupational therapist would assist her with the transitioning goal. The IEP team also developed a sensory processing goal for school participation to address Student's challenges and develop coping strategies designed to address situations during her school day which make her frustrated, overwhelmed, unable to concentrate and angry. This goal was designed to be implemented by a wide variety of school staff, including Tustin administrative members of the IEP team, Student's special education and regular education teachers, the special education classroom staff, and Student's occupational therapist.

24. To address Student's behaviors, the IEP team also reviewed Tustin's recently completed FBA and the proposed behavior support plan (BSP). Tustin's school psychologist was present to present the FBA and BSP. The FBA identified Student's noncompliant behavior, which occurred on average twice within a 43-minute period of time, and inappropriate and often crude verbalizations directed at peers and staff, which occurred on average three to five times within a 43-minute period. Parents and Dr. Paltin disagreed with the FBA, particularly the school psychologist's conclusion that Student's behavior was designed to avoid undesired activities or obtain attention, and not a result of other mental health conditions or misperceptions described by Dr. Paltin.

25. At the September 22, 2010 IEP team meeting, Student's advocate asked Dr. Berg how OCHCA planned to address Student's suicidal ideation and mood disorder.

OCHCA responded that it did not address emergencies. Dr. Berg stated that the purpose of the initial assessment was to determine eligibility for Chapter 26.5 services, and that OCHCA would consider increasing Student's services once Parents signed the service plan, and after Student's OCHCA treating psychologist recommended additional services as clinically necessary to meet the goals and objectives of the IEP. Dr. Berg recommended that Parents sign the service plan so that services could begin without further delay.

26. At the September 22, 2010 IEP team meeting, the team discussed Student's placement. Dr. Paltin expressed her concern that Student could not function in a classroom setting. She reported her concern for Student's safety in any school setting. Parents reported that the Tustin school was the largest Student had ever attended. Dr. Paltin did not make any recommendations regarding Student's educational placement. Tustin IEP team members described home hospital instruction as a future option if Student could not attend school due to emotional issues, and agreed to review Parents' request for a small, nonpublic school setting. Parents disagreed with home hospital instruction. Student's father maintained that home hospital instruction would disrupt Student's improving mental status, as she views her home as a "safe haven" from school.

27. The IEP team discussed the need to transition Student back to a school setting. Parents requested a therapeutic component to Student's school day and a nonpublic school placement, and advised the IEP team that they would provide comments in writing. Tustin recommended that the triennial assessment be advanced so that the IEP team could review Student's eligibility for special education and consider all her current needs. Tustin presented Parents with an assessment plan. Parents did not sign the assessment plan, the IEP or the service plan.

28. On September 28, 2011, Student's advocate, Ms. Bonnington, sent via facsimile, a letter to Tustin and OCHCA regarding the proposed IEP and service plan. In

her letter, under the heading "OCHCA," Ms. Bonnington requested at least once a week therapy based upon recent events at school, which she described as "Student's changed circumstances."

29. On October 4, 2011, Parents privately placed Student at Fusion Academy where she received one-on-one instruction. Fusion Academy is not a therapeutic school setting. It caters to pupils with varied scheduling needs that preclude them from attending school. Student attended Fusion Academy on a modified schedule for English and art. Dr. Paltin continued to provide Student weekly private therapy.

30. On October 5, 2011, OCHCA responded to the September 10 and September 28, 2010 letters from Student's advocates. OCHCA reminded Student's advocates that Dr. Berg had expressed doubts about psychotherapy as a viable treatment for Student's overall behaviors. Despite Dr. Berg's concerns, OCHCA repeated its willingness to attempt treating Student's mental health-related behavioral issues for six months "in the hope that psychotherapy will spill over into and manage [her] general behavior." OCHCA agreed to Student's request to increase individual therapy services to once weekly. OCHCA explained that it would not address Student's impairment of social interaction and sensory integration issues, because "these traits were related to Student's Asperger's Syndrome rather than her mental health issues," and were the responsibility of the school district. OCHCA maintained that the goal it developed appropriately addressed Student's "emotions and lack of anger management skills." OCHCA attached to its letter a revised service plan for Parents' signature reflecting the increased individual therapy sessions. OCHCA reminded Parents that it must receive a signed service plan before it can commence treatment, and Parents must also sign the IEP.

31. An IEP team met on October 7, 2011. Dr. Paltin, Parents and their advocates attended. Tustin failed to invite or notify OCHCA of the meeting. Consequently, OCHCA did not attend.

32. At the October 7, 2011 IEP team meeting, the team discussed OCHCA's letter and revised service plan. In addition, Dr. Paltin presented a written status report about Student which she referred to as a clinical treatment update. In her status report, Dr. Paltin's explained her recommendation that Student stop attending her Tustin school placement. In her report, Dr. Paltin did not make any recommendations regarding OCHCA services. Dr. Paltin's status report summarized Student's clinical presentation of her Asperger's Syndrome as behavioral, social and communicative impairments. Dr. Paltin stated that Student's disability was complicated by an impulse control disorder which compromised response and effectiveness of incentive-based behavioral management in the classroom and at home. She noted that Student's symptoms also "suggested" a mood disorder, and that a further assessment was needed to rule out schizoaffective disorder, or the presence of a thought disorder. Dr. Paltin explained that Student's exposure to the public school environment increased her agitation, difficulties with sensory integration and sensory defensiveness, and decreased her coping skills. To cope under stress at school, and in response to what Student perceived to be threatening situations, Student was verbally hostile to others and potentially harmful to herself. Dr. Paltin reported that as a result of school stress, Student expressed suicidal ideations, most recently her desire to hang herself in the school restroom with her shoelaces. According to Dr. Paltin, Student's desire to harm herself had diminished once she left school. Student reported to Dr. Paltin that she could control her self-destructive thoughts as long as she was not in the Tustin school, but if she returned she would consider suicide once again, as "that is why I wanted to die in the first place."

33. At the October 7, 2011 IEP team meeting, Tustin again presented Parents with a comprehensive triennial reassessment of Student. Tustin recommended that Student begin mental health services from OCHCA. In addition, Tustin recommended a transition plan for Student to return to school on a modified schedule.

34. Parents did not sign Tustin's triennial the assessment plan, the October 7, 2011 IEP, or OCHCA's service plan.

35. On October 8, 2011, then Governor Arnold Schwarzenegger vetoed the funding for Chapter 26.5 services and suspended the mandate for local government agencies, like OCHCA, to provide these services during the 2011-2012 fiscal year.

36. By letter dated November 9, 2010, OCHCA's clinical psychologist notified Parents of Governor Schwarzenegger's suspension of the mandate, and reminded Parents that they never signed the service plan authorizing OCHCA to commence services. As such, OCHCA was discharging Student's case based upon the Governor's suspension of OCHCA's mandate. OCHCA also informed Parents that due to the suspension of its mandate, it was in the process of transitioning all mental health services back to school districts by December 31, 2010.

STUDENT'S SETTLEMENT WITH TUSTIN

37. On October 13, 2010, Student filed a complaint with OAH (2010110232) naming Tustin and OCHCA as respondents. OCHCA was never served with the complaint and OCHCA's name was eventually removed from the case caption. In that case, Student claimed, among other things, that Tustin failed to provide Student a FAPE during the 2008 through 2009 school year by failing to conduct assessments and making Student eligible for special education as a pupil with an emotional disturbance. In addition, Student alleged that Tustin failed to offer a FAPE at the May 17 and August 17, 2010 IEPs where OCHCA made its recommendations for bi-weekly counseling, and failed to offer an appropriate placement at the October 7, 2010 IEP team meeting. As part of its

allegations regarding the October 7, 2010 IEP team meeting, Student also referenced Tustin's statement that it "forgot" to invite OCHCA. As a remedy, Student requested reimbursement for counseling, private assessments, tuition, transportation, and private mental health services.

38. On January 25, 2011, Tustin and Student entered into a written settlement agreement (Agreement) resolving, at paragraph (D) and paragraph (1),

all their educational issues and disputes relating to Student's past and present educational placement, as well as all issues related to educational and mental health services (relative to District's obligations only, not any obligations the Orange County Health Care Agency has to provide appropriate mental health services to Student), compensatory education, assessment/eligibility issues, reimbursement issues, attorneys' fees, all substantive and procedural matters relating to Student's education and other matters as addressed herein through the end of the 2011/2012 regular school year.

39. At paragraph 9 of the Agreement, the parties expressly reserved Student's right to maintain the action against OCHCA only.

40. As part of the Agreement, District reimbursed Parents for a portion of their educational fees for Fusion Academy during the 2010-2011, and 2011-2012 school years. In the Agreement the parties acknowledged the need for updated assessments, and agreed to a short form triennial assessment no later than November 3, 2011, consisting of Student's educational records, parent interview, student interview and informal reports of Student's present level of performance from Fusion Academy. The

parties agreed to a comprehensive reassessment on or before June 1, 2012, in all areas of suspected disability.

HEARING TESTIMONY

41. At hearing, Father provided testimony, and explained that Parents agreed that OCHCA's offer to increase services from its original offer to once a week was acceptable to Parents. However, Parents did not sign the revised service plan, because the goal as written did not provide for comprehensive mental health treatment for Student. Father explained that he believed his daughter's life was at risk, and unless her suicidal ideations and anxiety were addressed in therapy, Parents could not agree to OCHCA's proposed mental health services. Father explained that Parents' options were limited, as they could not expose Student to her public school environment without risking further suicide threats, and they could not enroll her in a therapeutic day school program without a referral from Tustin or OCHCA. Parents enrolled her at Fusion Academy because it provided one-to-one instruction and eliminated Student's exposure to the conditions in a school setting that escalated her self-destructive behavior. Father's testimony was sincere and heart felt and was weighed carefully against OCHCA's legal obligation.

42. Dr. Paltin also provided testimony at hearing. Dr. Paltin received her doctorate in 1992, and obtained her license to practice as a psychologist in the state of Hawaii in 1994, and in the state of California in 1995. In Hawaii she worked, among other places, for the Department of Education as a psychological examiner conducting psychological assessments and evaluations for special education. After she returned to California, she worked for OCHCA for approximately two years, where she conducted directly or as a supervisor of interns, roughly 12 mental health assessments per month pursuant to Chapter 26.5. Dr. Paltin was qualified to testify as Student's clinician and expert.

43. Dr. Paltin faulted OCHCA for failing to set forth a complete diagnostic profile of Student prior to developing its service plan and goals. Dr. Paltin insisted that OCHCA had access to information at the time it conducted its assessment which, if fully considered, should have resulted in a more comprehensive service plan. Dr. Berg stated in her report that she attempted without success to contact Dr. Paltin, but the uncontradicted testimony of Dr. Paltin at hearing established that she did not. Dr. Paltin recommended that Parents request that OCHCA supply to them its master service plan, which OCHCA created for every client. In general, a master service plan details the full diagnosis, according to the Diagnostic Service Manual (DSM) relied upon by mental health clinicians. Without knowing OCHCA's full diagnostic profile of Student, Dr. Paltin was not convinced that Student's mental health needs would have been served. Dr. Paltin noted, as set forth in her progress letter presented at the October 7, 2011 IEP team meeting, that the service plan for anger management showed that OCHCA had not set forth a full diagnostic profile, and was limiting its treatment to traditional behavior modification methods that would not have been appropriate for a pupil with Asperger's Syndrome.

44. When Dr. Paltin questioned Dr. Berg at the IEP meetings about its limited service plan, Dr. Berg told Dr. Paltin that it would not treat Asperger's Syndrome and that Dr. Paltin should continue to do so. However, at hearing, Dr. Paltin explained that Student's mental health status arising from her Asperger's Syndrome could not be cleanly separated from other mental health disorders, including her mood disorder. Student's service plan should have included goals addressing her limited ability to function socially, understand communication and respond appropriately, "perspective taking" (the ability to understand another's perspective), and unstable moods emanating from her mood disorder. OCHCA's service plan should have also addressed Student's history of self-injurious behaviors, including her suicidal ideations. Although Student's

sensory defensiveness, as displayed during physical education, could be addressed by an occupational therapist, Dr. Paltin maintained that her frustrations arising from this aspect of her Asperger's Syndrome should also be considered by her mental health therapist.

45. Dr. Paltin disagreed with OCHCA's one anger management goal. As written, OCHCA's anger management goal would not be effective for a pupil with Asperger's Syndrome. From her treatment and discussions with Student, Dr. Paltin believed that Student's frustration in the classroom was related to her inability to fully comprehend the motivations of others, her limited ability to appropriately communicate, as well as her inconsistent mood and history of suicidal ideations. Student was overwhelmed by the larger public school setting, and embarrassed by her placement in a special education class. From her discussions with Student, Dr. Paltin learned that Student's suicidal ideations were directly related to her difficulties at the Tustin school. Dr. Paltin stated that OCHCA's refusal to service Student's Asperger's Syndrome was outside the standard of care, as OCHCA's psychologists are fully qualified to treat the full spectrum of diagnoses that give rise to mental health disorders. As a mental health provider for OCHCA, Dr. Paltin regularly treated students with Asperger's Syndrome for related mental health disorders.

46. Dr. Paltin maintained that OCHCA's limited service plan further compromised Student's overall mental health treatment because if Parents had accepted the referral, Dr. Paltin would no longer be able to treat Student. According to Dr. Paltin, it would have been unethical for her to treat Student for only part of her mental health needs, and it was not within the standard of care for Student to have two treating psychologists for one-on-one services.

47. Dr. Paltin was sincere about her objections to OCHCA's service plan, knowledgeable about Student and deeply concerned about her welfare. Although

OCHCA elected not to participate in the hearing, OCHCA did set forth its position in its response to Student's complaint, which included documentation that Student had introduced into evidence. Student submitted additional documentary evidence, including Dr. Berg's assessment, and Student's IEPs, which provided additional information about OCHCA's service plan for Student. Dr. Paltin's testimony was measured carefully against OCHCA's legal obligations and its representations as set forth in its Chapter 26.5 mental health assessment, the proposed service plan, and documentary evidence. Despite her sincerity, as to Issue One, Dr. Paltin's testimony regarding the limited scope of OCHCA's service plan as further set forth in the legal conclusions below, conflicted with documentary evidence. Dr. Paltin's testimony did not support Student's Issue Two, and Student's allegations could not overcome the fundamental limitations of OCHCA's legal obligations pursuant to Chapter 26.5, and as further defined by the Agreement. Dr. Paltin's testimony was not relevant to Issue Three.

LEGAL CONCLUSIONS

BURDEN OF PROOF

1. As the petitioning party, Student has the burden of proving its contentions at the hearing. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-58, [126 S. Ct. 528].)

JURISDICTION OVER OCHCA

2. As a preliminary matter, OCHCA contests OAH's jurisdiction to determine whether it deprived Student of a FAPE under the Individuals with Disabilities Education Act (IDEA) on the grounds that Governor Schwarzenegger suspended the Chapter 26.5 mandate as of October 8, 2010. Student contends that OAH retains jurisdiction over OCHCA for services it failed to provide prior to October 8, 2010, as well as jurisdiction after Governor Schwarzenegger's suspension of the Chapter 26.5 mandate, on the ground that the suspension was unconstitutional. OCHCA declined to participate in the

hearing, advising that it was making only a “special appearance” to contest OAH’s jurisdiction, which it did so in its response to Student’s complaint, as well as in its written brief submitted post-hearing.

3. The IDEA does not distinguish between special and general appearances. Under general legal principles governing disputes in civil actions, OCHCA made a general appearance when it responded substantively to Student’s allegations and attached supporting documentation. (*California Dental Assn. v. American Dental Assn.* (1979) 23 Cal.3d 346, 352 [152 Cal. Rptr. 546] (filing an answer constitutes a general appearance).) Nevertheless, OAH is duty bound to consider whether it has jurisdiction to determine OCHCA’s obligations given the suspension of its mandate to provide Chapter 26.5 mental health services as of October 8, 2010. As more fully set forth below, based upon the governing decisional law at the time of this decision, *School Boards, supra*, 192 Cal.App.4th 1507,⁴ and the Factual Findings set forth herein, OAH has its jurisdiction to determine whether OCHCA failed to fulfill its obligations under the IDEA as part of its Chapter 26.5 mandate prior to October 8, 2010, but does not have jurisdiction to determine OCHCA’s obligations under the IDEA after October 8, 2010.

4. Under the IDEA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child’s IEP. (20 U.S.C. § 1401(a)(9).)

5. “Special education” is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(a)(29).) California law defines special

⁴The original complaint was lodged against Governor Arnold Schwarzenegger. After the inauguration of Governor Edmund G. Brown, Jr., the court authorized the substitution of names. (*School Boards, supra*, 192 Cal.App.4th 1507,1527 & fn.14.)

education as instruction designed to meet the unique needs of individuals with exceptional needs, coupled with related services as needed to enable the student to benefit fully from instruction. (Ed. Code, § 56031.) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).) Mental health services are related services. (20 U.S.C. § 1401(26); Ed. Code, § 56363, subd. (a).)

6. In 1984 the Legislature passed AB 3632, adding Chapter 26.5 to the Government Code (Gov. Code, § 7570 et seq.). Although the school district remains ultimately responsible for making a FAPE available to a pupil needing mental health services, (20 U.S.C. § 1414(d)(2); Ed. Code, § 56040, subd. (a)), Chapter 26.5 divided responsibility for the delivery of mental health services to special education students between the Superintendent of Public Instruction and the Secretary of Health and Human Services. (Gov. Code § 7570.) Chapter 26.5 emphasizes that the provision of mental health services is the joint responsibility of both agencies. (Ibid.)

7. Special education due process hearing procedures extend to the parent or guardian, to the student in certain circumstances, and to “the public agency involved in any decisions regarding a pupil.” (Ed. Code, § 56501, subd. (a).) A “public agency” is defined as “a school district, county office of education, special education local plan area, . . . or any other public agency . . . providing special education or related services to individuals with exceptional needs.” (Ed. Code, §§ 56500 and 56028.5.) Any parent, student, or agency may request a due process hearing, and OAH has jurisdiction to decide the matter under the procedures applicable to special education due process hearings. (Gov. Code, § 7586, subd. (a).) OAH’s jurisdiction extends to claims involving the identification, evaluation, or educational placement of the child with a disability, or the provision of a FAPE. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.507 (a)(1) and 34 C.F.R.

300.507 (a)(2); Ed. Code, § 5601, subd. (a).) Disputes regarding the recommendation for mental health services are within OAH's jurisdiction. Gov. Code § 7572, subd., (d)(3).)

8. On October 8, 2010, Governor Schwarzenegger released local agencies, including mental health agencies acting pursuant to Chapter 26.5, from providing mandated services during the 2010-2011 fiscal year, as a corollary to his line-item veto of appropriations for reimbursement for local mandated programs in the annual State Budget Act. On February 25, 2011, the California Court of Appeal for the Second Appellate District, in *School Boards, supra*, 192 Cal.App.4th 1507, affirmed the constitutionality of the Governor's authority to suspend the mandate. In a sweeping analysis the Court held that the Governor's constitutional authority to reduce or eliminate an item of appropriation in the State Budget Act passed by the Legislature extends to a lump-sum appropriation intended for multiple purposes. (*Id.* at pp. 1519-1520.) In reaching its decision, the Court reconciled the Governor's line-item veto authority with the ballot initiative that resulted in a constitutional amendment releasing local agencies from state-mandated responsibilities when deprived of state funding. Although the Governor acted in a legislative capacity when he exercised his line-item veto, he was permitted to do so as long as his veto power was permitted by the California Constitution. (*Id.* at p.1519; citing *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1089 [240 Cal. Rptr. 569].) The Court determined that the Governor was authorized to exercise his authority to do so pursuant to California Constitution. (*Id.* at pp. 1524-1525.)

9. The Court relied upon the California Constitution, article XIII B, section 6, subdivision (b)(1), which provided that, for a mandate, the Legislature must either appropriate, in the annual State Budget Act, the full payable amount that has not been previously paid, or suspend the operation of the mandate for the fiscal year for which the annual Budget Act is applicable. (*Id.* at pp. 1524-1525.) Based upon the amount of sums set forth in the schedule created by the Legislature for reimbursement of state

mandates, including Chapter 26.5 services, the Court concluded that the Legislature intended to allocate the full amount. (*Id.* at pp. 1521-1522.) As required by the California Constitution, the mandate was suspended when the Governor reduced the full amount allocated by his line-item veto. (*Id.* at p. 1526.)

10. As a consequence of the Court's determination that the Governor's exercise of his line-item veto was constitutional and effectively released local agencies from implementing state mandates, OCHCA's mandate to provide mental health services was suspended as of October 8, 2010. At that time, OCHCA's Chapter 26.5 mandate reverted back to Tustin, the local educational agency responsible for providing Student a FAPE. As such, OCHCA is not a proper party for disputes regarding Student's mental health services arising after October 8, 2010. However, OCHCA remains a proper party regarding disputes concerning mental health services due or owed to Student prior to October 8, 2010. Accordingly, OAH has jurisdiction to determine whether OCHCA denied Student a FAPE prior to October 8, 2010.

ISSUE 1: WHETHER OCHCA'S SERVICE PLAN AND GOALS DENIED STUDENT A FAPE.

11. Student contends that OCHCA's service plan denied Student a FAPE because it failed to offer sufficient frequency of services, failed to encompass the full range of Student's mental health needs, and failed to include sufficient goals. Student alleges that OCHCA's inadequate service plan was based upon an assessment that ignored up-to-date and available clinical information about Student, and Student's full diagnostic profile. For the following reasons, Student did not meet her burden of proof on this issue.

12. As discussed above, California special education law and the IDEA provide that children with disabilities have the right to a FAPE that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code § 56000.) FAPE

consists of special education and related services that are available to the child at no charge to the parent or guardian, meet the standards of the State educational agency, and conform to the student's individual education program. (20 U.S.C. § 1401(9).) (*See* Legal Conclusions 4-6, incorporated by reference.)

13. Mental health agencies join the IEP team under limited circumstances and only after the IEP team requests its involvement. The responsibility for developing the IEP, the written statement, inclusive of a statement of measurable annual goals, generally rests with the school district and Parents. (Ed. Code § 56345.) IEP teams are appropriately comprised of school district administrators and educators, and parents, unless other individuals with specialized knowledge, including related service personnel are required. (Ed. Code § 56341.)

14. Under Chapter 26.5, a school district, an IEP team, or a parent may initiate a referral to a county mental health agency by requesting a mental health assessment. (Gov. Code, § 7576, subd. (b).) Mental health agencies are reliant upon school district's for most of the information required for its assessments. The school district is required to provide the local mental health agency documentation, including, a description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil as part of the IEP, or reasons the service was considered but determined to be inadequate, assessments, and parents' consent. (Gov. Code § 7570, subd. (b).) The referral must be based upon emotional and behavioral characteristics that meet the following characteristics: observed by qualified educational staff in an educational setting; impede the pupil from benefitting from educational services; are significant as indicated in their rate of occurrence and intensity; cannot be described as social maladjustment or a temporary adjustment problem, and cannot be resolved by short-term counseling; and based upon educational assessments, pupil's functioning,

including cognitive functioning, is at a level sufficient to enable pupil to benefit from mental health services. (Gov. Code § 7570, subd. (b)(3).)

15. After accepting the referral, the county mental health agency is charged with specific responsibilities. It is responsible for conducting the mental health assessment of the pupil, and its assessment is a precondition for the inclusion of mental health services in the IEP. (Gov. Code §§ 7572, subd. (c) & (d).) The county mental health agency must prepare an assessment plan, which must include, at a minimum, the review of the pupil's school records and assessment reports and observation of the pupil in the educational setting, when appropriate. (Cal. Code Regs., tit. 2, § 60045, subd.(b).) Mental health assessments must be conducted by qualified mental health professionals, as specified in the regulations developed by the State Department of Mental Health, in consultation with the State Department of Education. (Gov. Code § 7570, subd. (c).) The county mental health agency is also required to report to the IEP team. The county mental health agency is required to review and discuss its recommendations with parents and appropriate members of the IEP team, and provide a written report. (Cal. Code Regs., tit. 2, § 60045, subd. (f).) When parents disagree with the recommendation of the county mental health agency, and request the presence of the county mental health agency, a representative of the agency is required to attend the IEP team. (Cal. Code Regs., tit. 2, § 60045, subd. (f)(1).)

16. In making its mental health service recommendation, the county mental health agency is charged with acting on behalf of school district IEP team members. Following discussion and review, mental health agency recommendations shall be the recommendations of IEP team members on behalf of the school district. (Cal. Code Regs., tit.2, § 60045, subd. (f)(3).) The mental health portions of the IEP shall include a description of the Student's present levels of social and emotional performance, the goals and objectives of the mental health services, a description of the mental health

services, and the duration and frequency of the mental health services. (Cal. Code Regs., tit.2, § 60050, subd. (a)(1-4).)

17. Upon adoption of the county mental health agency recommendations by the full IEP team, including Parents, the county mental health agency "is responsible for the provision of mental health services" to the student "if required in the individualized education program" of the pupil. (Gov. Code, § 7576, subd. (a).) The county mental health agency is not responsible for responding to psychiatric emergencies or other situations requiring immediate response. (Gov. Code § 7576, subd. (f).) The county mental health agency can not provide mental health services until the parents provide signed consent for the proposed treatment plan; written parental consent for treatment is in addition to the signed IEP. (Cal. Code Regs, tit. 2, § 60050(a)(5).

18. An IEP is evaluated in light of information available at the time it was developed; it is not judged in hindsight. (*Adams by & through Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149 (*Adams*).) "An IEP is a snapshot, not a retrospective." (*Roland M. v. Concord Sch. Comm.* (1st Cir. 1990) 910 F.2d 983, 992; *Adams, supra*, 195 F.3d at p. 1149, citing *Fuhrmann v. East Hannover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1041.) The IEP must be evaluated in terms of what was objectively reasonable when it was developed. (*Roland M., supra*, 910 F.2d at p. 992

19. In this action, Student convincingly established that, based upon the information OCHCA had available to it at the time of its assessment, its service plan did not offer a sufficient frequency of services to Student. The evidence showed that Student had been participating in weekly therapy sessions at the time of Dr. Berg's assessment. Aside from the multiple hospital admissions, Student had instances of bullying, aggression, and self-injurious conduct at school. Yet, Dr. Berg recommended a reduction in Student's therapy, without providing any rationale for reducing the frequency of her therapy. OCHCA increased its offer only after Parents demanded more

frequent services. However, even after OCHCA agreed to Parents request for more frequent psychotherapy services, Parents refused to sign the service plan because they did not agree with OCHCA's service goal, and for this reason, they failed to meet their burden of proof on Issue One.

20. Student failed to meet her burden of proof that OCHCA's one anger management goal denied her a FAPE. In a letter to OCHCA, Student's advocate requested that the goals be inclusive of Student's impairment of social interactions, impairment due to sensory integration issues, compliance with authority, mood disorder, and self-mutilation. In most respects OCHCA fulfilled its responsibilities as a related mental health care service provider. The referral to OCHCA was made soon after Student returned to a public school setting after a private placement. Dr. Berg appropriately relied upon the school records Tustin was required to provide to her including IEPs, and Student's most recent 2008 assessments by Tustin and Dr. Paltin. Contrary to Dr. Paltin's assertion that Dr. Berg's failure to speak with her deprived Dr. Berg of information necessary to develop appropriate goals, Dr. Berg was apprised of Student's current status through Student's hospitalization records, reports from New Vista, and significantly, her direct interviews with Student and her mother. Dr. Berg reviewed the diagnosis of Student's medical doctor and the doctor's opinion that Student's behavior was consistent with Student's special education eligibility of autism. As Dr. Berg noted in her report, Dr. Paltin's report stated that Student had a mood disorder in addition to her Asperger's Syndrome. Many of the concerns that Dr. Paltin reported at hearing, Student and Mother had shared directly with Dr. Berg.

21. Dr. Paltin faulted OCHCA for not producing a master plan with a five axis DSM diagnosis. However, there was no requirement that OCHCA provide Parents a master plan. Further, based upon Dr. Berg's recommended goal and service rationale, there was insufficient evidence that OCHCA was required to follow Dr. Paltin's diagnosis

to successfully service Student. Aside from Asperger's, Dr. Paltin's diagnosis of mood disorder, by her own admission was less certain. Contrary to Dr. Paltin's testimony, OCHCA did not reject treating Student's mental health issues related to her Asperger's Syndrome. Rather, OCHCA rejected treating traits that were associated with Asperger's Syndrome, such as impairment of social interaction and sensory integration issues, and asserted that Tustin needed to address those needs. Indeed, the evidence showed that the IEP team did, in fact, develop several goals to address Student's sensory and communication needs, as well as an FBA. In OCHCA's response to the advocate's letter, it specifically stated that it would deal with Student's emotions and lack of anger management skills. As written, the anger management goal encompassed a range of Student's emotional responses to classroom stresses, by first requiring her to verbally identify the onset of feelings of anger, and situations which cause anger, and then requiring her to identify three appropriate ways to handle her anger .

22. As an initial referral, OCHCA's goal was appropriate. As required, OCHCA's services had to enhance Student's access to her educational environment. OCHCA was prohibited from providing emergency services related to Student's suicide threats. Based upon Student's history, despite her long-standing therapeutic relationship with Dr. Paltin, she was averse to a classroom setting, and her emotional reaction to the public school environment was extreme. Knowing Student's history, OCHCA was suspicious about the utility of therapy, but offered a trial of therapy, with the opportunity to include other IEP team goals, based upon the treating psychologist's recommendations. Dr. Paltin may have preferred a more comprehensive approach, but for a pupil just transitioning back to public school, at the time it was offered, OCHCA's recommended goal was appropriate, especially when viewed in the context of Student's other IEP goals. Dr. Paltin's ethical choice not to continue treating Student once she received OCHCA's services may have been correct, but her decision does not dictate

OCHCA's legal obligations as a mental health related service provider. As is their right, Parents declined OCHCA's offer and continued with Dr. Paltin.

23. In sum, under these circumstances, OCHCA was under no obligation to provide Student with mental health services, or to reimburse Parent for services rendered by Dr. Paltin. (Legal Conclusions 4-6, and 11-22, and Factual Findings 1-47.)

ISSUE 2: WHETHER OCHCA FAILED TO PROVIDE STUDENT A FAPE BY FAILING TO EVALUATE AND OFFER STUDENT A THERAPEUTIC PLACEMENT.

24. Student contends that based upon Parents' repeated requests for a therapeutic placement, and Student's known mental health status, OCHCA should have conducted an evaluation that addressed her need for a therapeutic placement, and recommended a therapeutic placement to the IEP team. For the following reasons, Student failed to meet her burden of proof.

25. It is the IEP team's responsibility to determine eligibility based upon the review of assessments results. (Ed Code § 56342, subd. (a).) If a pupil is assessed pursuant to Education Code section 56320, and found to be seriously emotionally disturbed, and any member of the individualized education program team recommends residential placement based on relevant assessment information, the individualized education program team shall be expanded to include a representative of the county mental health department. (Gov. Code § 7572.5.) At that time the expanded IEP team shall review the assessment and determine alternative placement, including nonresidential services. (Gov. Code § 7572.5, subd. (b).) If the student requires a residential placement, the county mental health agency becomes the lead case manager and is responsible for the non-educational costs of the placement, while the school district is responsible for the educational costs. (Gov. Code, §§ 7572.2, subd. (c)(1), 7581.)

26. In Student's complaint, she ascribes to Student the characteristics of a pupil with emotional disturbance, suggesting that OCHCA should have addressed her

mental health needs as if she was eligible for special education as a pupil with an emotional disturbance. It is unclear from Student's complaint if she is suggesting a residential placement. However, the IEP documents and hearing testimony establish that Parents requested a therapeutic day placement at each IEP team meeting. Shortly after the 2010-2011 school year began, Student's behaviors and threats of self-injury escalated, and Dr. Paltin recommended that she be removed from the public school. At the IEP team meeting of September 22, 2010, Parents, through their advocates, again requested a therapeutic day placement, and confirmed the request in a follow-up letter about one week later. Student's proposition that OCHCA, absent a specific referral from the IEP team, was obligated *sua sponte* to evaluate and refer Student to a therapeutic placement, is without legal foundation. Student did not provide any evidence that the IEP team referred Student to mental health to assess her eligibility for special education as a pupil with emotional disturbance. The IEP records produced did not memorialize any suggestion that Student's eligibility should be changed to emotional disturbance. Dr. Paltin characterized Student as having Asperger's and a mood disorder. Parents were represented by their advocates at the IEP team meetings and did not recommend a review of Student's eligibility as a pupil with emotional disturbance. Parents agreed to other assessments. However, Student's last psychoeducational assessment was in 2008. Tustin IEP member requested an early triennial assessment to review Student's eligibility, and her needs. Parents did not consent to an updated triennial assessment until they entered into the Agreement resolving this matter. OCHCA's legal obligations to make placement recommendations to the IEP team or on behalf of Tustin were limited. As to placement decisions for pupils with emotional disturbance, OCHCA only becomes a member of the expanded IEP team after a pupil is found to be seriously emotionally disturbed, and a member of the IEP team recommends residential placement.

27. The Agreement also precludes Student's action against OCHCA for its failure to make a therapeutic placement referral. The Agreement fully resolved all educational and mental health claims against Tustin. The ALJ requested that Student specifically address in her closing brief what obligations independent of Tustin were excluded from the Agreement. Student failed to brief this issue. By moving forward with this action, Student presumes that the Agreement preserved its rights as to OCHCA because the Agreement excluded OCHCA's obligations to Student. As set forth in Legal Conclusion 25, OCHCA did not have any obligation to Student pursuant to Chapter 26.5 to make Student eligible for special education as a pupil with an emotional disturbance. Student's eligibility for special education was determined by Tustin, and a change in her eligibility had to be made by Tustin after an assessment. The Agreement establishes that Student will not be reassessed for special education eligibility until November 2011. As set forth in Legal Conclusions 13 through 17, OCHCA's separate obligations to Student are limited. Based upon the evidence in this action, OCHCA had an obligation to assess, recommend services and goals, and, with Parents' consent, provide services. OCHCA's obligation to Student to make placement recommendations was not triggered until it received the appropriate referral, which it did not. As set forth in Legal Conclusion 25, OCHCA did not have an obligation to recommend a therapeutic placement, unless the Tustin IEP team had made Student eligible for special education as a pupil with an emotional disturbance.

ISSUE 3: WHETHER OCHCA DENIED STUDENT A FAPE BY FAILING TO ATTEND THE OCTOBER 7, 2010 IEP TEAM MEETING.

28. Student failed to meet her burden of proof that OCHCA denied Student a FAPE by failing to attend the October 7, 2010 IEP team meeting.

29. It is the school district's responsibility to conduct IEP team meetings (Ed. Code § 56340). At the discretion of the parent, guardian or school district, the IEP team

shall include related service personnel, where appropriate. (Ed. Code § 56341, subd. (b)(6). 7572(d)(e) In addition, whenever a mental health related service is to be considered for inclusion in the child's IEP, the school district shall invite the responsible public agency representative to meet with the individualized education program team to determine the need for the service and participate in developing the IEP. (Gov. Code § 7572, subd. (d) & (e).)

30. Student's contention that OCHCA failed in its obligations to attend the October 7, 2010 IEP team meeting contradicts Father's testimony. To the extent an obligation existed, it belonged to Tustin, and Student's right to contest this issue was waived by the Agreement. Student's decision to move forward with this issue given the known and admitted facts was frivolous. (Legal Conclusion 30, and Factual Findings 31 and 37.)

31. In sum, based upon Factual Findings 1 through 47, and Legal Conclusions 1 through 30, Student is not entitled to any relief.

ORDER

All Student's claims for relief are denied.

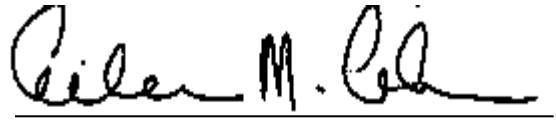
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process. OCHCA prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days of receipt.

Dated: May 5, 2011

A handwritten signature in black ink, appearing to read "Eileen M. Cohn", written over a horizontal line.

EILEEN M. COHN

Administrative Law Judge

Office of Administrative Hearings