BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

IN THE MATTER OF:

PARENTS ON BEHALF OF STUDENT,

V.

LAKESIDE UNION SCHOOL DISTRICT.

OAH CASE NUMBER 2021060402

ORDER GRANTING JOINT MOTION TO VACATE DISMISSAL AND ORDER FINDING SETTLEMENT TO SERVE THE PUBLIC INTEREST (GOV. CODE § 1091(b)(15)(B) [CORRECTED]

OCTOBER 8, 2021

On September 23, 2021, the parties filed a joint motion to vacate dismissal and enter an order finding the parties settlement of Student's due process request to be "in the public interest" (Gov. Code § 1091(b)(15)(B)). On September 23, 2021, the Office of Administrative Hearings issued a notice of hearing for September 30, 2021, on the parties' motion.

On September 30, 2021, Administrative Law Judge, Clifford H. Woosley, held the hearing on the parties' motion, by videoconference. The Administrative Law Judge is called an ALJ. The Office of Administrative Hearings is called OAH.

Chris Eisenberg, Attorney at Law, appeared for the Parents on behalf of Student. Matthew P. Juhl-Darlington, Attorney at Law, appeared on behalf of Lakeside Union School District. The hearing was recorded. Based upon discussion with the parties, the ALJ issues the following order.

The initial October 8, 2021 order is reissued to correct a clerical error. This corrected order does not alter or affect the findings and determinations of the original order.

MOTION TO VACATE DISMISSAL

Student filed a due process request, called the complaint, on June 9, 2021. On August 24, 2021, attorney Eisenberg filed a motion to dismiss the complaint, with prejudice, on behalf of Student. OAH vacated the prehearing conference and hearing dates, dismissed this matter, and served notice of case dismissal on September 7, 2021. On September 23, 2021, the parties filed the joint motion to vacate the dismissal.

At hearing, the parties' attorneys generally represented that the request for dismissal was a mutual mistake of counsel. Student's Parents and Lakeside signed a Compromise and Release Agreement on August 18, 2021. This settlement agreement included a provision that Student's complaint would be dismissed within three business days of full execution of the agreement. Student's attorney complied with the provision and filed the request to dismiss. However, both attorneys acknowledged at hearing that the settlement agreement should not have included the dismissal provision because the agreement was not binding until approved by Lakeside's Board of Trustees. The Board had not yet approved the agreement.

The attorneys accepted mutual responsibility for the error and requested that their clients not bear the consequences of their mistake. Though not binding upon special education administrative due process procedures, Code of Civil Procedure, section 473, provides guidance. Subsection (b) states that a court may, upon any terms as may be just, relieve a party or legal representative of a dismissal taken against the party through mistake, inadvertence, surprise, or excusable neglect.

Here, the attorneys convincingly represented that they mistakenly included the dismissal provision in the settlement agreement. Neither party will be prejudiced or otherwise harmed by the dismissal's recall. Therefore, the September 7, 2021 dismissal is vacated.

MOTION FOR ORDER FINDING SETTLEMENT TO BE IN THE PUBLIC INTEREST

The parties seek an OAH order finding that their settlement "serves the public interest." The motion includes a full copy of the executed settlement agreement and is supported by the declarations of attorney Juhl-Darlington and Student's Parent Two. Student's Parent Two is a trustee on Lakeside's Board of Trustees and is referred to as the Parent Trustee.

The parties have established that Parent Trustee would have a conflict of interest in the Board's consideration of the settlement agreement for approval. Generally, Government Code, Section 1090, prohibits public officers, while acting in their official capacities, from making contracts in which they are financially interested. The prohibition applies to virtually all state and local officers, employees, and multi-member bodies, whether elected or appointed, at both the state and local level. The purpose of Section 1090 is to make certain that "every public officer be guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity" (*Thomson v. Call* (1985) 38 Cal.3d 633, 650).

The parties have also established that Parent Trustee's and the Board's conflict of interest cannot be resolved by the Parent Trustee's mere recusal from participating in the Board's consideration of the settlement agreement. When Section 1090 applies to one member of a governing body of a public entity, the prohibition cannot be avoided by having the interested board member abstain. Instead, the entire governing body is precluded from entering into the contract. (*Thomson, supra*, at pp. 647-649; *Stigall v. City of Taft* (1962) 58 Cal.2d 565, 569.) Under Section 1090, officials are deemed to have a financial interest in a contract if they might profit from it in any way. (*People v. Honig* (1996) 48 Cal.App.4th 289, 333.) An agreement to settle a lawsuit is generally treated as a contract. (See *T.M. Cobb Co. v. Superior Court* (1984) 36 Cal.3d 273, 280.) A contract that violates Section 1090 is void. (*Thomson, supra*, at p. 646.) (Also see, Cal.Fair.Pol. Prac.Com., *Letter to Kyle W. Holmes* (October 12, 2018), Adv. A-18-180, 2018 WL 5270208.)

The Legislature created statutory exceptions to Section 1090's prohibition when the financial interest is deemed a "remote interest." Section 1091, subsection (a), states that a board member shall not be deemed to be interested in a contract entered into by the board if the member has only a remote interest in the contract, the interest is disclosed and noted in official records, and the board thereafter authorizes, approves or ratifies the contract in good faith.

Section 1091(b) lists and defines 17 "remote interests" which would relieve a conflict of interest between the member and the board. The remote interest defined in Subsection (b)(15) is relevant to the facts herein and states:

> "(15) That of a party to litigation involving the body or board of which the officer is a member in connection with an agreement in which all of the following apply:

(A) The agreement is entered into as part of a settlement of litigation in which the body or board is represented by legal counsel.

"(B) After a review of the merits of the agreement and other relevant facts and circumstances, a court of competent jurisdiction finds that the agreement serves the public interest.

"(C) The interested member has recused himself or herself from all participation, direct or indirect, in the making of the agreement on behalf of the body or board."

Here, Lakeside was represented by counsel in the due process proceeding and in the negotiations leading to the settlement agreement. The Parent Trustee has recused, and will continue to recuse, herself from all participation, directly or indirectly, in the making of the agreement on behalf of Lakeside's Board. The parties maintain that OAH is the court of competent jurisdiction to find that the settlement agreement serves the public interest, satisfying the third prong of subsection 15's definition of "remote interest."

OAH HAS COMPETENT JURISDICTION

Section 1091(b)(15) concerns a board member who is a party to litigation involving the board. Here, this is Parent Trustee and Lakeside's Board of Trustees. The section also refers to a written agreement to settle the litigation. Subsection 15 would not apply if the agreement settled a dispute that was not in litigation. The statutory language contemplates that a court was already involved and exercising jurisdiction over the dispute, which was the subject of the settlement. The court exercising jurisdiction over the litigation would therefore be the court of competent jurisdiction as long as the settlement agreement concerned matters that were within its jurisdiction because of the litigation. Here, the forum exercising jurisdiction over Parents' due process complaint, on behalf of their child, is OAH.

OAH exercises jurisdiction in due process request proceedings under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq. (2006); Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a free appropriate public education, called a FAPE. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.)

OAH's jurisdiction has not previously been found to include a finding that a settlement agreement serves the public interest under Section 1091(b)(15)(B). However, OAH has exercised jurisdiction over factual findings and legal determinations, outside of special education law, when necessary to fulfill the IDEA public policy purpose of making the procedural protections of due process available to all parents, on behalf of their children, in an efficient and expeditious manner. For example, the determination of parents' residency involves evidence, factual findings, and legal applications that are not directly related to the provision of a FAPE. Yet, OAH examines and rules on residency within due process proceedings, when necessary to determine the responsible local education agency for providing a student with FAPE. A residency determination for the purpose of the IDEA is made under state law and is no different from a residency determination in other types of cases. (*Union Sch. Dist. v. Smith* (1994) 15 F.3d 1519, 1525.) If OAH refused to do so, parents, where residency was in dispute, would not be able to utilize IDEA due process procedures to protect their children's special education needs, without undue delay and expense. They would be required to first seek another forum to resolve the residency dispute, limiting access to IDEA's procedural protection in an efficient and expeditious manner.

Similarly, here, parents who were members of a school district board, in which their children received special education and related services, would be hampered in accessing and benefiting from IDEA's speedy and efficient procedural protections. If OAH refused to exercise jurisdiction, Parent Trustee would be burdened to find another court of competent jurisdiction to determine if an IDEA due process complaint's settlement is in the public interest. Finding such a court or forum would involve more time, expense, and uncertainty. For example, a request to approve a minor's compromise of a claim in California Superior Court would be a questionable option because the court would be asked to determine if the compromise of a disputed claim for money properly protected the child's interest. (C.C.P. § 372.) Also, until the board approves the settlement, there would be no compromise to approve. Federal courts exercise jurisdiction over appeals from OAH due process decisions and disputes over related attorney fees. (20 U.S.C. § 1415(i)(2) & (i)(3).) Unlike other parents, Parent Trustee will incur additional cost and delay, searching for another forum, because Parents chose to settle their child's due process complaint. Such a burden discourages a parent board member from pursuing and settling a due process complaint and is inconsistent with IDEA's public policy purpose of accessible, efficient, and expeditious procedural protections for all parents and students.

Like residency, OAH is the appropriate forum for determining that a settlement agreement between Parents and Lakeside is in the public interest under Section 1091(b)(15). To do otherwise would diminish Parent Trustee's use of IDEA's speedy and efficient procedural protections. OAH has jurisdiction of the issues settled by the agreement and, as such, is the court of competent jurisdiction as contemplated by Section 1091(b)(15)(B).

THE SETTLEMENT AGREEMENT SERVES THE PUBLIC INTEREST

The Legislature acknowledged that public policy favors resolving disputes without the need for protracted litigation or a full-blown trial. (See *Wilson v. Wal-Mart Stores, Inc*. (1999) 72 Cal.App.4th 382, 390-391.) The parties' settlement agreement of a due process proceeding is consistent with legislative public policy and avoids the cost, expense, and time of a due process hearing for the parties and upon OAH's limited resources. OAH resources should be reserved for otherwise irreconcilable disputes. (*Ibid*.)

The settlement resolves all claims between the Parents and Lakeside, related to Student's due process complaint with OAH. The settlement agreement provides that Lakeside will fund independent educational evaluations for Student, governs the terms of parental involvement and participation in Student's education, and requires Lakeside to hold an individualized education program meeting within 30 days. Lakeside also agrees to pay Eisenberg's attorney fees of $2,000. In return, Parents fully release and discharge Lakeside and its board member, agents, and employees from and all claims, rights, demands, and causes of actions, known and unknown, that Parents may have regarding the issues raised in the due process complaint, to the date of the agreement.

The agreement does not settle any claims unrelated to Student's due process complaint or special education. OAH has jurisdiction over the claims being addressed in the agreement. The settlement agreement avoids a due process hearing, preserves public resources, and resolves all issues in Student's due process complaint. After a review of the merits of the agreement, and other relevant facts and circumstances, the settlement agreement is found to serve the public interest (Gov. Code § 1091(b)(15)(B)).

ORDER

1. The motion to vacate the September 7, 2021 dismissal is granted and the dismissal is set aside.
2. This matter is reopened, and the case's timeline recommences as of September 29, 2021.
3. The motion for an order finding the parties settlement agreement serves the public interest is granted.
4. The Office of Administrative Hearings is empowered as the court of competent jurisdiction, under Government Code, section 1091(b)(15)(B), to determine if the parties' settlement agreement serves the public interest.
5. The parties' August 18, 2021 settlement agreement serves the public interest, in accordance with Government Code, section 1091(b)(15)(B).
6. The parties have reached a final settlement, pending approval by the Board of Trustees for Lakeside Union School District. The matter shall be continued and calendared for dismissal 60 days from the date of this Order, unless the Office of Administrative Hearings is notified otherwise.

Clifford H. Woosley

Administrative Law Judge

Office of Administrative Hearings