

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

STATE OF NEW MEXICO, *ex rel.*
HECTOR H. BALDERAS, Attorney General,

Plaintiff,

v.

D-202-CV-2014-01604

ITT EDUCATIONAL SERVICES, INC., et al.,

Defendants.

ORDER ON DEFENDANT'S MOTION TO COMPEL ARBITRATION

THIS MATTER is before the Court on Defendant's Motion to Compel Arbitration and Stay Case. The motion is **DENIED**.

Defendant ITT Educational Services, Inc. (ITT) moves to compel the State to arbitrate on the grounds that ITT's students sign enrollment agreements that contain an agreement to arbitrate. However, the State is not a party to the enrollment agreements and ITT has not identified any exception to the rule that a nonsignatory cannot be compelled to arbitrate its claims. *See Damon v. StrucSure Home Warranty, LLC*, 2014-NMCA-116, ¶ 11 (listing five theories for binding nonsignatories to arbitration agreement).

ITT relies on *Rex, Inc. v. Manufactured Housing Comm. of the State of N.M. Manufactured Housing Div.*, 1995-NMSC-023, 119 N.M. 500, for the proposition that the State can be compelled to arbitrate because it is in privity with the students. *Rex* does not support ITT's argument. *Rex* considered whether and under what circumstances an administrative agency will be bound by an arbitration award under principles of collateral estoppel. *Rex*, 1995-NMSC-023, ¶ 14 (privity is an element of collateral estoppel). The question here is not whether the State is estopped by an existing arbitration award, but whether the State is bound to an arbitration agreement even though it is not a signatory. *Rex* does not address this question and therefore is not applicable. *State ex rel. King v. Capital One Bank (USA) N.A.*, 980 F.Supp.2d

1346 (D.N.M. 2013), which considered whether the State was bound by a class action settlement under principles of res judicata, is inapplicable for the same reason.

ITT argues the State is bound by the students' agreements to arbitrate because, in seeking victim-specific relief, the State is a proxy for the students. The Court does not agree the State is a proxy for students or that it is acting in a representative capacity in this case. The State's authority to pursue alleged violations of the Unfair Practices Act is independent of any private right of action. NMSA 1978, § 57-12-8(A) (1977). The State has not agreed to arbitrate claims it brings under its own authority and thus cannot be compelled to arbitrate even if the same claim would be subject to arbitration if brought by a student who signed an arbitration agreement. Even if the State is seeking the same relief that a student could seek, such as restitution, the State's authority to pursue such relief is not derivative. The State is authorized to petition for restitution regardless of whether a student seeks individual relief. *Id.* § 57-12-8(B) (authorizing attorney general to petition for restitution).

ITT has offered no authority for the proposition that students who enroll in its programs have authority to bind the State to a contractual obligation to arbitrate. Accordingly, ITT's motion to compel arbitration is denied. Given the Court's conclusion that ITT has failed to establish that the State is bound by agreements to arbitrate that students sign, the Court does not address the scope of the agreements to arbitrate or whether they are unconscionable.

IT IS SO ORDERED.



Valerie Huling
District Court Judge

E-filed on December 8, 2015

Charlene Montae
TCAA to Judge Valerie Huling