

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT on behalf of STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2009080479

ORDER GRANTING REQUEST FOR
RECONSIDERATION AND
GRANTING MOTION TO AMEND
COMPLAINT TO ADD CCS AS A
PARTY

On October 12, 2009, the undersigned administrative law judge issued an order denying Student's Motion to Amend the Due Process Complaint and add California Children's Services (CCS) as a party (Motion to Amend). On October 22, 2009, Student filed a Motion for Reconsideration of Order Denying Motion to Amend to Add a Party (Reconsideration Motion) on behalf of Student. District has not filed an opposition to the Reconsideration Motion.

APPLICABLE LAW

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

California Education Code section 56501, subdivision (a), provides that a parent or public education agency may request a due process hearing when there is a proposal or a refusal to initiate or change the identification, assessment, educational placement or the provision of a free appropriate public education (FAPE) to their child, or when there is a disagreement regarding the availability of a program available for the child, including the question of financial responsibility. (20 U.S.C. § 1415(b)(6).)

Special education due process procedures extend to the parent, under some circumstances to the student, and to the public education agencies involved in decisions regarding the student. (Ed. Code, § 56501, subd. (a); 20 U.S.C. § 1415(a).) A "public education agency" is defined as "a district, special education local plan area, or county office, ...or any other public agency providing special education or related services." (Ed.

Code, § 56500.) Similarly, federal law defines public agencies that are subject to the procedures of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) as all political subdivisions of the State that are involved in the education of children with disabilities, including the State education agency, local education agencies, and other State agencies and schools, and State and local juvenile and adult correctional facilities. (34 C.F.R. § 300.2.)

Pursuant to California Government Code section 7570 it is the joint responsibility of the Superintendent of Public Instruction (Superintendent) and the Secretary of Health and Human Services agency (Secretary) to ensure that a child with a disability has been provided with a FAPE. The Secretary may designate a single agency in each county to coordinate occupational therapy (OT), physical therapy (PT) and psychological services and service responsibilities. (Gov. Code, § 7571.) Disputes relating to necessary and related services provided by an agency designated by the Secretary are to be resolved pursuant to Education Code section 56500, et. seq. (Gov. Code, § 7572, subd. (d)(3).) Notwithstanding any provision of law, the State Department of Health Services (Department) or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary OT and PT services by reason of a medical diagnosis and when contained in a student's IEP. (Gov. Code, § 7575, subd. (a)(1).) Related services or designated instruction not medically necessary, but that the IEP team determines to be necessary in order to assist a child to benefit from special education, shall be provided by the local education agency (LEA). (Gov. Code, § 7575, subd. (a)(2).) The Department shall provide the OT and PT services directly or by contracting with another public agency. (Gov. Code, § 7575, subd. (c) and (d).)

DISCUSSION

Student filed her motion for reconsideration in a timely manner. Student alleges new facts in support of the Reconsideration Request. Student's new information clarifies CCS's role in providing Student with OT and PT. Student explains that her IEP designates CCS as the party responsible for the delivery of her OT and PT services. Student also explains that CCS, as an agency designated by the Secretary to provide OT and PT services, has played an active role at Student's IEPs by providing the team with progress reports and proposing goals and objectives in these areas.

In support of Student's request for reconsideration permitting her to amend her complaint to add CCS as a party, Student now cites California Government Code sections that describe the shared responsibility of District and CCS to provide related services. Government Code sections 7570, et seq., provides that to ensure that a child with a disability has been provided with a FAPE, the Secretary may designate a single agency in each county to coordinate occupational therapy, physical therapy and psychological services and service responsibilities. In addition, the Government Code sections cited by Student provide that under certain circumstances a school district, an LEA and CCS have joint responsibility for providing a student related services. If a dispute arises regarding an agency's responsibility

for providing these necessary related services, it shall be resolved pursuant to Education Code sections, 56500 et seq. (Gov. Code, § 7572, subd. (d)(3).)

Previously, this ALJ denied Student's Motion to Amend based on Student's failure to recite facts and law to demonstrate that CCS met the Education Code's prerequisites for including a party in a special education due process complaint. (Ed. Code, §§ 56500 and 56501, subd. (a).) Student did not provide facts and law demonstrating that: CCS is a public agency providing special education or related services and that it was involved in decisions regarding this Student. In providing this ALJ with new information, Student has shown that CCS is a public entity and it is involved in decisions regarding Student's special education program and services. In the instant case, there is alleged dispute between District and CCS regarding who is responsible for providing Student with OT and PT services. This dispute should be resolved pursuant to Education Code section 56500, et seq., through Student's Request for a Due Process Hearing. Thus, CCS is a proper party and Student may amend her Due Process Complaint and add CCS as a party.

ORDER

Accordingly, Student's request for reconsideration is GRANTED and Student may amend her Due Process Complaint in order to add CCS as a party. Student shall file her amended complaint within 14 days of the date of this order. If no amendment is filed, the complaint will go forward against the named party on the dates currently calendared.

IT IS SO ORDERED.

Dated: October 29, 2009

/s/

CLARA SLIFKIN
Administrative Law Judge
Office of Administrative Hearings