

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, TORRANCE UNIFIED
SCHOOL DISTRICT, CALIFORNIA
DEPARTMENT OF MENTAL HEALTH, and
LOS ANGELES COUNTY DEPARTMENT
OF MENTAL HEALTH.

OAH CASE NO. 2010110325

ORDER DENYING LOS ANGELES
COUNTY OFFICE OF EDUCATION'S
MOTION TO DISMISS

PROCEDURAL HISTORY

Student filed a Due Process Hearing Request (complaint) on November 8, 2010, naming the Los Angeles County Office of Education (LACOE), the Torrance Unified School District (TUSD), the California Department of Education (CDE), the California Health and Human Services Agency (CHHS), the California Department of Mental Health (CDMH), and the Los Angeles County Department of Mental Health (LACDMH). The Office of Administrative Hearings (OAH) dismissed Student's complaint as to CDE in an order issued December 3, 2010. In an order issued December 6, 2010, OAH denied CDMH's motion to dismiss itself as a party. However, OAH granted CDMH's motion to dismiss issue two of Student's complaint, which alleged state and federal civil rights causes of actions against all respondents, since those allegations are beyond the jurisdiction of OAH. On December 23, 2010, OAH denied in part and granted in part TUSD's motion to dismiss, granting its motion only as to the allegations and requests for relief in Student's complaint that were made on behalf of similarly situated students. OAH found those contentions to be beyond its jurisdiction in a special education due process proceeding. Finally, in an order issued December 30, 2010, OAH granted CHHS's motion to dismiss, denied CDMH's second motion to dismiss, and clarified that the order issued on December 23 dismissing claims and remedies as to similarly situated students also dismissed Student's requests for structural and systemic relief regarding the provision of mental health services by the various named respondents in this case.

LACOE'S MOTION TO DISMISS

On December 22, 2010, LACOE filed a motion to dismiss it as a party to this case. LACOE raises four grounds in its motion. First, it alleges that Student's complaint fails to state a claim against LACOE for various reasons. LACOE contends that the complaint does not make specific allegations that it failed to follow statutory guidelines in assessing student for mental health services and that in any case it was not the agency responsible for assessing him. LACOE also asserts that as a county office of education it is generally responsible for providing educational programs to students residing in juvenile hall in Los Angeles County, including special education and related services under Education Code, sections 48645.1 and 56150, in this case TUSD assumed that responsibility, thereby relieving LACOE of its statutory obligations. Finally, LACOE contends that it did provide Student with a free appropriate public education (FAPE), and provides a declaration in support of that contention.

LACOE also contends that Student's allegations concerning the provision of a FAPE to him subsequent to the filing of Student's complaint are not ripe for adjudication. Finally, LACOE contends that the allegations in Student's issue two are beyond the jurisdiction of OAH as are Student's allegations and requested remedies pertaining to similarly situated students, including any requests for structural and systemic relief.

As discussed more fully below, LACOE's arguments that the complaint fails to state a claim against it or that the alleged violations are not its responsibility, are unpersuasive, as are its arguments that allegations concerning the time period after the filing of Student's complaint are unripe. LACOE's motion to dismiss it as a party is denied. With regard to its motion to dismiss issue two of Student's complaint, and to dismiss allegations pertaining to similarly situated Students, those contentions are moot in light of OAH's dismissal of the allegations in previous orders, as indicated above.

FACTUAL BACKGROUND

Student's complaint generally seeks an OAH determination as to what agency is responsible for implementing mental health services through Student's IEP and through the IEP's of similarly situated children. Student has broken his contentions into four time frames, beginning with the Governor's veto on October 8, 2010, of state funding to county mental agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq. Student requests a determination of agency responsibility during each of the discrete periods of time.

Student's complaint alleges the following facts, which, for purposes of a motion to dismiss, are accepted as true. Student lives with his parents within the

boundaries of TUSD. He was previously found eligible for special education and related services while he was in third grade, and received services to address his emotional needs. Starting in February 2010, Student began a downward spiral in his emotional well-being, resulting in two suicide attempts. He was hospitalized a number of times and placed in local residential centers when released. TUSD referred him to LACDMH for a further assessment, which LACDMH completed on August 27, 2010. That assessment recommended that Student's IEP team place him in a residential treatment center.

On September 20, 2010, Student was again released from a hospital stay. He left home an hour after arriving there, and was shortly picked up by the police and taken to juvenile hall. On September 27, 2010, TUSD convened an expanded individualized education program (IEP) team for Student although he was then residing at juvenile hall. The IEP team consisted of TUSD and LACDMH. It is unclear why TUSD convened the meeting or why LACOE did not participate. TUSD and LACDMH agreed that Student required a residential treatment center placement. TUSD agree to pay for the educational costs of the placement and LACDMH agreed to pay the mental health costs. Student's mother signed the IEP. LACDMH then began a search for an appropriate placement. It determined that the Devereaux treatment center in Texas was appropriate for Student and that it would accept him. However, subsequently the Governor vetoed mental health funding for provision of these types of services by county mental health agencies. On October 12, 2010, while appearing in court to discuss Student's residential placement, the public defender informed Student's parents that LACDMH was not longer funding mental health placements. Instead of being transferred to Devereaux, Student remained in juvenile hall. On November 3, 2010, LACOE agreed to implement Student's IEP. Student's mother signed a new IEP that day.

DETERMINATION OF ISSUES

I. LACOE is a Proper Respondent

A. Applicable Law

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.)

Government Code section 7586, subdivision (c), provides that all hearing requests that involve multiple services that are the responsibility of more than one

state department shall give rise to one hearing with all responsible state or local agencies joined as parties.

In California, a county office of education is responsible for the provision of a FAPE to individuals who are confined in juvenile hall schools within that county. (Ed. Code, §§ 48645.1, 48645.2, 56150.) When a residential placement is recommended by an IEP team, the local education agency, such as a county office of education, is financially responsible for transportation to and from the residential placement and all special education instruction and non-mental-health related services. (Cal. Code Regs., tit. 2, §§ 60010, subd. (k) [including county offices of education within the definition of local education agency (LEA)], 60110, subd. (b)(2) [for residential placements, “The LEA shall be responsible for providing or arranging for the special education and non-mental-health related services needed by the pupil.”], & 60200, subd. (d).)

Under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.), the state educational agency (SEA) has the responsibility for the general supervision and implementation of the Act. (20 U.S.C. § 1412(a)(11)(A); 34 C.F.R. § 300.149(a)(2006).) This responsibility includes ensuring that a FAPE is available to all children with disabilities in the mandated age ranges within the state. (20 U.S.C. § 1412(a)(1)(A); 34 C.F.R. § 300.101(a)(2006).) In the rare instance when state law does not provide for a responsible LEA or public agency, then the duty to provide a FAPE falls upon the SEA. (*Gadsby v. Grasmick* (4th Cir. 1997) 109 F.3d 940, 952-953; *Orange County Dept. of Education v. A.S.* (C.D.Cal. 2008) 567 F.Supp.2d 1165, 1169-1170.)

A student who has been determined to be an individual with exceptional needs or is suspected of needing mental health services may, after the Student’s parent has consented, be referred to a community mental health service in accordance with Government Code section 7576 when the student meets criteria for referral specified in California Code of Regulations, title 2, section 60040, and the school district has, in accordance with specific requirements, prepared a referral package and provided it to the community mental health service. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 14, § 60040, subd. (a).)

The purpose of the IDEA is to “ensure that all children with disabilities have available to them a free appropriate public education” and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a

disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

If the expanded IEP team determines that the student requires a residential placement, the local community mental health agency will become the student's lead case manager. The local community mental health agency has the responsibility for locating an appropriate residential facility. (Cal. Code Regs., tit. 2, § 60100, subd. (e).) If the IEP team then determines to place the child in a residential facility, the local community mental health agency shall ensure that the mental health services in the student's IEP are provided. (Cal. Code Regs., tit. 2, § 60100, subd. (i).) Regarding the funding of the residential placement, the school district is responsible for the educational costs and the local community mental health agency is responsible for the mental health services. For the residential costs of the placement, the community mental health agency is responsible to authorize payment based on the rate established by the California Department of Social Services for the residential facility, and the payment for the residential costs shall be made by the local county welfare department. (Cal. Code Regs., tit. 2, § 60200, subd. (e) and (f).)

If a dispute arises between the school district and the community mental health agency regarding the provision of related services or financial responsibility, either agency may submit a complaint to either the Secretary of Public Instruction or the Secretary of the California Health and Human Services Agency. If the dispute cannot be resolved informally, the parties will then proceed to a hearing before the OAH. (Gov. Code, § 7585.) Further, the school district and community mental health agency are to use the dispute resolution procedures in Government Code section 7585, if a dispute regarding the responsibility, including financial responsibility, of providing services ordered by OAH after a hearing or agreed upon by the parties in mediation, pursuant to Education Code sections 56503 and 56505. (Cal. Code Regs., tit. 2, § 60600, subd. (a) and (b).) Neither the school district or the community mental health agency may request a due process hearing pursuant to Education Code section 56501, against another public agency. (Gov. Code, § 7586, subd. (d).)

B. Discussion of Issues

LACOE contends that it is not an appropriate respondent for any time period covered by the complaint because either the complaint fails to state a claim against it, TUSD voluntarily took over responsibility for Student's educational needs, the provision of mental health services to Student is the responsibility of LACDMH, or, alternatively, LACOE provided Student with a FAPE during his residence at juvenile hall.

To the extent that LACOE maintains that the complaint does not provide a sufficient description of the allegations against it, that assertion is properly the subject

of a notice of insufficiency, which must be filed within 15 days of service of a due process complaint on a respondent. In this case, LACOE failed to timely file a notice of insufficiency. It cannot now attempt to circumvent the notice of insufficiency procedures through a motion to dismiss.

LACOE also argues that it did meet all of Student's needs, including his mental health needs, while he resided in juvenile hall. However, any such contention addresses the merits of Student's complaint and thus goes to the heart of factual disputes between the parties. A ruling on LACOE's contention thus can only be resolved by considering evidence, such as the declaration LACOE attaches to its motion to dismiss, effectively turning this motion to dismiss into a motion for summary judgment. Special education law does not provide for summary judgment procedures. LACOE's motion to dismiss based on its contention that it met its statutory duty to provide FAPE to Student is therefore denied.

LACOE additionally argues that it is not responsible for addressing Student's mental health needs. LACOE argues that LACDMH had that responsibility once it assessed Student and recommended that he be placed at a residential treatment center. LACOE contends that the failure to transfer Student to Devereaux was the sole responsibility of LACDMH and or TUSD because of the failure to implement the IEP agreed to on September 27, 2010. This assertion contradicts statutory requirements as well as LACOE's own admission that it is responsible for the education of students housed in juvenile hall.

OAH has previously determined that while students continue to reside in juvenile hall, county offices of education such as LACOE are responsible for their education, including meeting the students' mental health needs and the provision of a residential placement if needed for them to receive a FAPE. (*Student v. Los Angeles County Ofc. of Ed.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2010040889; *Student v. Los Angeles County Ofc. of Ed.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2010040050; and *Student v. Los Angeles Unified Sch. Dist., Los Angeles County Ofc. of Ed., Los Angeles County Dept. of Mental Health, and California Dept. of Ed.* (2010) Cal.Offc.Admin.Hrngs. Case No. 2009100939.) LACOE cannot escape responsibility by seeking to shift its responsibility for providing a FAPE to LACDMH or TUSD.

Additionally, OAH does not have jurisdiction in a special education proceeding to determine the respective financial responsibility between LACOE and LACDMH for Student's requested residential placement. Pursuant to California Code of Regulations, title 2, section 60600, subdivision (b), LACOE or LACDMH could request a separate hearing before OAH to determine financial responsibility. Therefore, LACOE's motion to dismiss is denied because LACOE is a potentially responsible party since the dispute regarding the appropriate offer of placement to Student involves multiple agencies that have the responsibility to make the placement offer. (Govt. Code, § 7586, subd. (c).)

II. The Allegations Concerning Time Periods After November 8, 2010, are Ripe for Adjudication as they Pertain to LACOE

Student is seeking a determination by OAH of the public agency responsible for provision of mental health services, including residential placement from September 27, 2010, through the end date of a federal temporary restraining order now in effect involving Student. Student also seeks compensatory mental health services for loss of educational benefit during the time he was in juvenile hall. The temporary restraining order may be in effect until January 14, 2011.

Generally, there is no right to file for a special education due process hearing absent an existing dispute between the parties. A claim is not ripe for resolution “if it rests upon ‘contingent future events that may not occur as anticipated, or indeed may not occur at all.’” (*Scott v. Pasadena Unified School Dist.* (9th Cir. 2002) 306 F.3d 646, 662 [citations omitted].) The basic rationale of the ripeness doctrine is “to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements.” (*Abbott Laboratories v. Gardner* (1967) 387 U.S. 136, 148 [87 S.Ct. 1507].)

This concept of ripeness, however, must be analyzed within the context of the purposes of the IDEA (20 U.S.C. § 1400 et. seq.), which is to “ensure that all children with disabilities have available to them a free appropriate public education” (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), (C); see also Ed. Code, § 56000.) A party has the right to present a complaint “with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child.” (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Based upon the language of the IDEA and California’s parallel statutes concerning special education, a party may present a claim based upon a *proposal or refusal* to initiate or change a child’s educational placement. Therefore, if a party has indicated that it is proposing to change an aspect of a child’s special education, or that it will refuse to implement a program, a claim will be ripe even if the change or refusal has not yet occurred. Concretely, this concept is demonstrated in a situation where a school district has proposed changing a student’s placement, the parents do not agree to the proposed change, file for due process, and the student remains in the initial placement under stay put while the matter is resolved. Although in that

situation the change has not been implemented, since it was proposed, the student's parents have a right to file for due process.

Such is the case here. Student's complaint alleges that LACOE, among other respondents, is refusing to provide him with appropriate mental health services and therefore refusing to provide him with a FAPE. That allegation is in the nature of a continuing violation. Student's allegations against LACOE for the time period after November 8, 2010, are therefore ripe for adjudication and will not be dismissed as to LACOE.

III. Allegations as to "Similarly Situated" Students and Allegations of State and Federal Civil Rights Violations

Student alleges violations by the named respondent agencies as to himself and similarly situated students. Student's requests for remedies include "structural and systemic" relief for all students affected by the Governor's veto of mental health funding and the resulting alleged failure by the named agencies to provide all such students with appropriate mental health services. In effect, Student's complaint attempts to create a class action with Student as the lead plaintiff. Student's issue two also raises allegations that all respondents, including LACOE, have violated Student's civil rights under both state and federal statutes.

However, as stated above, OAH previously dismissed these allegations in orders addressing the motions to dismiss of other respondents in this case. Since the allegations have already been dismissed, LACOE's motion to dismiss them is moot.

ORDER

1. LACOE's motion to dismiss it as a party is denied.
2. LACOE's motion to dismiss all allegations as to similarly situated students and requests for structural and system relief is denied as moot.
3. LACOE's motion to dismiss Student's issue two, alleging violations of state and federal civil rights statutes is also denied as moot.

4. This matter will proceed as to all remaining allegations as presently scheduled.

Dated: December 30, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings