

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT, CALIFORNIA DEPARTMENT OF EDUCATION, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, AND LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2010110500

ORDER: GRANTING CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY'S MOTION TO BE DISMISSED AS PARTY; DENYING CALIFORNIA DEPARTMENT OF MENTAL HEALTH'S MOTION FOR RECONSIDERATION; DENYING MOTION TO DISMISS BECAUSE ISSUES ARE NOT RIPE, AND; GRANTING MOTION TO DISMISS CLAIMS RELATED TO SYSTEMIC AND STRUCTURAL ISSUES AND CLAIMS ON BEHALF OF ANYONE OTHER THAN STUDENT

On November 12, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles Unified School District (LAUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On December 20, 2010, CHHS and CDMH filed Motions to Dismiss. On December 22, 2010, Student filed opposition.

By Order of December 6, 2010, OAH denied CDMH's motion to be dismissed as a party.<sup>1</sup> Therefore, CDMH's motion to dismiss itself as a party is considered a motion for reconsideration.

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.)

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<sup>1</sup> OAH granted CDMH motion to dismiss the complaint's Issue Two, which is dismissed as to all parties.

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).)

Government Code section 7571 states that the Secretary for CHHS may designate a state governmental department to assume the responsibilities of providing special education services and, further, shall designate a single agency in each county to coordinate the service responsibilities as describe by statute thereafter.

If required by a student's individualized education program (IEP), CDMH, or a community mental health service agency designated by CDMH, is responsible for the provision of mental health services after the completion of mental health assessment. (Govt. Code, § 7576, subd. (a) and (b).) CDMH has designated by regulation that the community mental health service agency of student's county of origin is responsible for conducting the mental health assessment and provision of mental health services. (Cal. Code Regs., tit. 2, § 60200, subd. (c).)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) 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), 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.)

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].)

OAH does not have jurisdiction to entertain claims based on other provisions of Federal and California law, such as the Due Process and Equal Protection Clauses of the Federal and California Constitutions, Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.), and the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.).

## DISCUSSION

### *CDMH Motion for Reconsideration is Denied*

CDMH asserts that it is not an appropriate party to this action because it has performed all its duties which it was required to do after the Governor's veto on October 8, 2010 of the appropriation of funds for AB632. Because CDMH's prior motion to dismiss was denied by OAH's December 6, 2010 Order, the ALJ views CDMH's motion as a motion for reconsideration.

CDMH cites Government Code section 7576.2 as definitively limiting its responsibility to monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils and to ensure that funds provided for this purpose are appropriately utilized. However, section 7576, subdivision (a) states that CDMH, or any community mental health service designated by CDMH, ". . . is responsible for the provision of mental health services, . . ." In this case, LACDMH purportedly denied any responsibility to provide Student with mental health services due to the Governor's October 8, 2010 veto of state funding to county mental health agencies. Because LACDMH purportedly refused to provide Student with mental health services by canceling Student's October 14, 2010 IEP meeting, a triable issue for hearing exists whether CDMH was responsible to provide the requested mental health services pursuant to Government Code, section 7576, subdivision (a).

CDMH has not presented any new or different facts, circumstances, or law justifying reconsideration. The motion for reconsideration of the December 6, 2010 Order is denied.

### *CHHS' Motion to Be Dismissed as a Party Is Granted*

Section 7571 defines CHHS' role in the division of interagency responsibilities as the designation of a state department to assume the responsibilities described in section 7570 (ensuring maximum utilization of all available state and federal resources to provide FAPE to children with disability) and county agencies responsible for coordinating the services described in section 7572 (assessments, related services, designated instruction and services). Unlike section 7576's designation of CDMH as the ultimate provider of mental health services, section 7571 does not state that CHHS is responsible for the provision of services to a student.

The complaint raises no claims that CHHS denied Student a FAPE and seeks no remedies from CHHS, other than for CHHS to exercise its supervisory authority to ensure

that Student receives a FAPE. Further, the complaint makes no claims that CHHS is a public agency involved in the provision of special education services or decisions regarding Student. The issue of CHHS' designation of state government departments and county agencies is outside the scope of OAH's jurisdiction. Accordingly, CHHS is not a necessary or proper party to the complaint, and its motion to dismiss as a party is granted.

*Motion to Dismiss Because Claims Are Not Ripe is Denied*

The motion to dismiss is also based upon the assertion that the claims are not ripe because there is no existing dispute between the parties. Respondents argue that the claims seek present adjudication of a possible future denial of services when the temporary restraining order expires. Thus, the Student has not been harmed. However, at the time of the complaint's November 12, 2010 filing, Student was being denied the mental health services which the AB3632 assessment recommended because the October 14, 2010 IEP was unilaterally cancelled by the LACDMH. Therefore, a dispute does exist as to denial of mental health services as of the time of the complaint's filing.

*Motion to Dismiss Systemic, Structural, and "Class Action" Claims is Granted*

Student seeks OAH adjudication of systemic issues involving the state and county structuring for the provision of mental health services to Student and other "similarly situated" children. Such claims exceed placement and the provision of FAPE in the LRE for Student. In the opposition, Student states that the complaint included such "non- IDEA claims out of an abundance of caution," basically acknowledging that OAH lacks jurisdiction.

In the December 6, 2010 order, OAH dismissed Issue Two, which alleged violation of Due Process and Equal Protection Clauses of the Federal and California Constitutions, Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.), and the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.). OAH lacks jurisdiction to address such claims in a due process under IDEA.

Similarly, Student's systemic claims and claims on behalf of other "similarly situated" children are outside OAH jurisdiction in a due process proceeding. Accordingly, all systemic claims and all claims on behalf of anyone other than Student are dismissed. The due process hearing will proceed against the remaining respondents only on issues related to the placement and provision of FAPE in the LRE to Student, as more specifically pled in the complaint.

ORDER

1. CDMH's motion to dismiss is deemed a motion for reconsideration and, as such, is denied.
2. CHHS' motion to be dismissed as a party is granted.
3. The motion to dismiss because the claims are not ripe, is denied.
4. The motion to dismiss claims for state and county systemic and structural relief, and claims on behalf of "other similarly situated" children, is granted. The due process hearing will proceed against the remaining respondents only on issues regarding the placement and provision of FAPE in the LRE to Student, as pled in the complaint.

Dated: December 27, 2010

/s/

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CLIFFORD H WOOSLEY  
Administrative Law Judge  
Office of Administrative Hearings