

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT, LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2012041144

ORDER DENYING MOTION TO
DISMISS

On April 30, 2012, Student filed a Due Process Hearing Request (complaint) naming Los Angeles Unified School District (LAUSD) and Los Angeles County Department of Mental Health (DMH) as respondents. The complaint alleged, in pertinent part, that in preparation for an annual individualized educational plan (IEP) team meeting held on May 10, 2011, DMH assessed Student, and that based on that assessment the IEP team denied Student a free appropriate public education (FAPE) by failing to offer residential treatment for summer 2011 and the following 2011-2012 school year. Parents unilaterally placed Student in residential treatment, and in the complaint they seek reimbursement of their tuition and other costs commencing July 12, 2011.

On May 7, 2012, DMH moved to be dismissed as a party, arguing that at the time of the DMH assessment in or around May 2011, the IEP team meeting on May 10, 2011, and the unilateral placement beginning July 2011, DMH was not a legally responsible party with respect to the provision of FAPE. OAH has received no opposition from Student to DMH's motion, however as discussed below the motion is nevertheless denied.

APPLICABLE LAW AND DISCUSSION

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 (including assessments) to individuals with exceptional needs." (Ed. Code, §§ 56500, 56028.5, and 56353, subd. (a).) All state departments and local agencies are governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code, and 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. (Gov. Code, § 7586, subs. (a) and (c).)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure.

Here, the Motion is not limited to matters that are facially outside of OAH jurisdiction, but instead seeks a ruling on the merits.

Prior to July 1, 2011, mental health services related to a pupil's education were statutorily provided by a local county mental health agency, like DMH, that was jointly responsible with the school district pursuant to Chapter 26.5 of the Government Code. (Gov. Code §7570, et seq.) On October 8, 2010, former Governor Schwarzenegger vetoed funding for mental health services provided by county mental health agencies like DMH. On February 25, 2011, in *California School Boards Association v. Brown* (2011) 192 Cal.App.4th 1507 (*CSA v. Brown*), the court found that the veto suspended the mandate of county mental health agencies to provide mental health services that were required to provide individual students with a FAPE. (*CSA v. Brown, supra*, 192 Cal.App.4th, at p. 1519.) Subsequently, on June 30, 2011, the Governor signed into law a budget bill (SB 87) and a trailer bill affecting educational funding (AB 114). Together they made substantial amendments to Chapter 26.5 of the Government Code. In particular, certain Sections were suspended effective July 1, 2011, and were repealed by operation of law on January 1, 2012, unless amended. The following sections of Chapter 26.5 of the Government Code were repealed: §§ 7572 (c), 7572.5, 7572.55, 7576, 7576.2, 7576.3, 7576.5, 7586.5, 7586.6, 7586.7, and 7588. However, the Sections relating to who were proper parties to due process disputes were not repealed. (Gov. Code, § 7586, subs. (a) and (c).) Moreover, AB 114 directed the California Department of Education (CDE) and California Health and Human Services Agency (CHHS) to modify or repeal regulations no longer supported by statute. No action has been taken to date. Thus, State regulations adopted to implement AB 3632 (Cal. Code Regs., tit. 2, §§ 60000, et seq.), have not been expressly repealed.

DMH's motion argues, based on OAH decisions after hearing, that the application of the above law to the facts in this case will ultimately render a decision on the merits that will be in its favor. However, that determination must be made based on a particular application of the law to the facts established at hearing. Here, based on the allegations of the complaint, which allege DMH assessed Student and participated in IEP team decisions regarding placement, DMH is a proper party over whom OAH has jurisdiction. Because special education law does not provide for a summary judgment procedure, the motion is denied. All dates currently set in this matter are confirmed.

ORDER

The Motion to Dismiss is denied. The matter shall proceed as scheduled.

Dated: May 15, 2012

/s/

JUNE R. LEHRMAN
Administrative Law Judge
Office of Administrative Hearings