

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALIFORNIA CHILDREN'S SERVICES,
CUPERTINO UNION SCHOOL
DISTRICT, SANTA CLARA COUNTY
OFFICE OF EDUCATION.

OAH CASE NO. 2012080386

ORDER (1) DENYING MOTION OF
CALIFORNIA CHILDREN'S
SERVICES TO LIMIT ISSUES, AND
(2) GRANTING THE MOTION TO
JOIN DISTRICT AND SCCOE AS
PARTIES

On August 13, 2012, Student filed a due process hearing request (complaint) against the Santa Clara County Office of Education (SCCOE), Cupertino Union School District (District) and Department of Health Care Services/California Children's Services (CCS) as respondents, alleging that respondents denied Student a free appropriate public education (FAPE). As to CCS, Student alleged that Student was denied a FAPE because CCS had failed to provide Student with adequate occupational therapy (OT), physical therapy (PT), or equipment to access his educational program for the 2011-2012 and 2012-2013 school years.

Student subsequently filed a withdrawal of claims against SCCOE and District due to a settlement reached, and SCCOE and District were dismissed as parties on September 14, 2012.

On October 26, 2012, CCS filed a motion to be dismissed from Student's complaint because the Office of Administrative Hearings (OAH) did not have jurisdiction to hear Student's claims against CCS, and to join SCCOE and District as parties. By order dated November 6, 2012, administrative law judge (ALJ) Peter Paul Castillo denied both motions on their merits. ALJ Castillo found that OAH has jurisdiction to hear Student's denial of FAPE claims against CCS. As to joining SCCOE and District, ALJ Castillo found that (i) CCS had cited no authority for joining parties to an action after their alleged responsibilities to the petitioner had been settled and dismissals entered on those claims, and that (ii) CCS, as a state agency, could not bring a due process claim against another public agency pursuant to Education Code, section 56501, as it was attempting to do by seeking to join SCCOE and District to this action, although the due process proceeding against CCS did not preclude CCS from seeking an administrative hearing pursuant to Government Code, section 7585, to resolve an inter-agency dispute regarding responsibility for services provided to Student.

On November 5, 2012, apparently in anticipation of the prehearing conference (PHC), CCS again filed a motion to be dismissed from Student's complaint because OAH lacked

jurisdiction, and to join District and SCCOE as parties. CCS also sought to have the issues in this proceeding limited to whether the OT and PT services provided to Student were medically necessary, arguing that Chapter 26.5 only required it to provide medically necessary services to students.

At the PHC on November 14, 2012, ALJ Deidre L. Johnson granted Student leave to amend his complaint, rendering CCS's pending motions moot, but expressly allowed CCS to "renew any appropriate motion in light of Student's amended complaint." Student's amended complaint specified that the equipment CCS had failed to provide was a wheelchair, and further alleged that CCS had denied Student a FAPE for the 2011-2012 and 2012-2013 school years by failing to adequately assess Student for OT and PT, to ensure that Student's IEP contained appropriate OT and PT goals, or to attend IEP team meetings or appropriately participate in the IEP team process.

On December 17, 2012, CCS filed the instant motion to limit issues, or in the alternative, to join District and SCCOE as parties. On December 17, 2012, District and SCCOE filed opposition to the motion to join. On December 18, Student filed opposition to the motion.

APPLICABLE LAW

The Individuals with Disabilities in Education Improvement Act of 2004 (IDEA) applies to state and local educational agencies, and also to any other political subdivisions of the State that are responsible for providing education to children with disabilities. (34 C.F.R. §300.33 (2006); Ed. Code §56028.5).

Under the IDEA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child's individualized education program (IEP). (20 U.S.C. § 1401(9).) Special education related services, called designated instruction and services in California, include in pertinent part developmental, corrective, and supportive services, such as PT and OT, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. § 1401(a)(26); Ed. Code, § 56363.)

The IDEA requires a school district to provide a FAPE, or "access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. (*Board of Education of the Hendrick Hudson Central School Dist. v. Rowley* (1982) 458 U.S. 176, 200 [102 S.Ct. 3034].) Related services needed by a child with a disability to benefit educationally are determined by the child's IEP team members, at an IEP team meeting, and recorded in the IEP. (34 C.F.R. § 300.22 (2006)). The IEP team must consider, and an IEP must include, among other things, academic and functional goals designed to (i) meet the child's needs resulting from the child's disability to enable the child to be involved in and make progress in the general education curriculum,

and to (ii) meet the child's other educational needs that result from the child's disability. (20 U.S.C. § 1414(d)(1)(A)(i)(II); Ed. Code, § 56345, subd. (a)(2); 34 C.F.R. § 300.320(a)(2)(i) (2006).)

In contrast to providing related services for purposes of implementing the IDEA, CCS, an agency administered by the Department of Health Care Services (Department), is charged with providing medically necessary OT and PT to pupils with physical disabling conditions who are treated in public schools, under the State of California's Medical Therapy Program. (Health & Saf. Code, § 123825 and 123950; Cal. Code Regs., tit. 22, § 41450; Gov. Code, § 7575, subd. (b)(i).) Whether, and to what extent, OT and PT services are medically necessary is determined by the pupil's medical therapy conference members and prescribed by a CCS paneled physician.¹ (Cal. Code Regs., tit. 2, § 60323, subd. (d).) This determination is not controlled by the IEP team, or a part of the IEP process. Medically necessary OT and PT are provided by CCS to ameliorate or improve a pupil's diagnosed condition, and are focused on medical treatment goals, not access to curriculum. (Cal. Code Regs., tit. 2, § 60323; Gov. Code, § 7575, subd. (b)(3).)

Pursuant to Title 1, Division 7, Chapter 26.5 of the Government Code, entitled "Interagency Responsibilities for Providing Services to Children with Disabilities" (Gov. Code, § 7570, et seq. (Chapter 26.5)), it is the joint responsibility of the Superintendent of Public Instruction (Superintendent) and the Secretary of the Health and Human Services Agency (Secretary) to ensure maximum utilization of resources to provide a child with a disability with a FAPE and related services. (Gov. Code, § 7570.) A child with a disability may need both educational and medical needs addressed during the school day, and the part of Chapter 26.5 that deals expressly with medically necessary OT and PT provided by CCS requires that "[l]ocal education agencies shall provide necessary space and equipment for the provision of [OT] and [PT] in the most efficient and effective manner." (Gov. Code, § 7575, subd. (d).)

The language of Chapter 26.5 on interagency obligations draws a clear distinction between IDEA related services and medically necessary OT and PT. The statute provides that CCS "shall be responsible for the provision of medically necessary occupational therapy and physical therapy...by reason of medical diagnosis and when contained in the child's [IEP]." (Gov. Code § 7575, subd. (a)(1).) However, "[r]elated services not deemed medically necessary...that the [IEP] team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency...." (Gov. Code § 7575, subd. (a)(2).) Nowhere in the Medical Therapy Program or Chapter 26.5 is CCS required to provide related services not deemed by the Department to be medically necessary. Once the Department determines that OT and PT are no longer medically necessary, if the pupil's IEP team has determined that OT and PT are related services

¹ A CCS physician may also approve a prescription submitted by a pupil's private physician. (Cal. Code Regs., tit. 2, § 60323, subd. (c).)

necessary for a child to benefit from special education, the obligation to provide those services shifts to the local educational agency. (Gov. Code § 7575, subds. (a)(1) and (2).)

Under Chapter 26.5, “[a]ll state departments, and their designated local agencies shall be governed by the procedural safeguards in Section 1415 of Title 20 of the United States Code [IDEA].” (Gov. Code § 7586, subd. (a).) Thus, it appears that even though CCS-provided medically necessary PT and OT were not intended to be provided for purposes of providing a FAPE under IDEA, California has determined that disputes arising about such services, when listed in the child’s IEP, shall be heard in an IDEA due process hearing. Further, 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.” (Govt. Code § 7576, subd. (c).) OAH has jurisdiction to hear due process claims arising under the IDEA and California special education law. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

DISCUSSION

Student’s amended complaint states two claims against CCS only: that (1) CCS substantively denied him a FAPE during the 2011-2012 and 2012-2013 school years by failing to provide adequate OT and PT and a wheelchair, failing to adequately assess Student’s OT and PT needs, and failing to ensure that Student’s IEP’s contained goals in all Student’s areas of need; and that (2) CCS procedurally denied him a FAPE during the 2011-2012 and 2012-2013 school years by failing to participate in IEP team meetings or to comply with the procedural requirements of the IDEA.

CCS moves to limit issues at hearing, or alternatively to join District and/or COE as parties, as discussed more fully below. District and COE oppose, arguing that they entered into a settlement of Student’s claims against them at the September 5, 2012 resolution session, and that Student no longer has claims against them to be adjudicated. District and COE also argue that it is not necessary that they be joined for CCS to present its defense to Student’s claims, and that this motion is in the nature of an untimely motion for reconsideration, asserted on the same facts, circumstances and law.

Motion to Limit Issues at Hearing

CCS contends that under Government Code, section 815, a public entity cannot be liable for an injury unless a statute or state or federal constitution imposes liability for that injury, or unless the agency is contractually liable, and that therefore the issue at the due process hearing should be limited to its obligations under Chapter 26.5 as the only statutory obligations applicable to this dispute.

This motion to limit the issue at hearing to a determination of whether CCS met its obligation of providing medically necessary OT and PT services is a repackaging of CCS’s prior motion to dismiss on the ground that CCS was not, and is not, responsible for providing

Student with a FAPE. Neither the Medical Therapy Program nor Chapter 26.5 require CCS to provide Student with non-medically necessary related services, let alone a FAPE. CCS is not statutorily obligated to ensure that Student's OT and PT services were "adequate" to provide Student with educational benefit, or to be a member of Student's IEP team unless it conducted certain OT and PT evaluations or evaluation reviews pursuant to Government Code, section 7572. However, whether and under what circumstances CCS evaluated Student or provided therapy services involves a factual inquiry, and CCS is not entitled to a prehearing determination that the only issue at hearing will concern its provision of OT and PT services pursuant to a medical therapy plan. Student's complaint alleges that CCS was, or should have been, extensively involved in his educational program, and evidence on the extent of services provided to Student, the purpose and nature of those services, and whether those services were medically necessary or only required for Student to benefit from special education will necessarily be presented. The ALJ is empowered to control proceedings at the hearing (Gov. Code, § 11512, subd. (b)), and may limit the testimony and documentary evidence as the factual information presented clarifies the legal relationship between CCS and Student. CCS' motion for a prehearing order to limit issues is denied.

Motion to Join Educational Agencies as Parties

As set forth above, Chapter 26.5 authorizes a due process hearing under the IDEA and California special education law for disputes involving related services. However, it requires that disputes involving services that are the responsibility of more than one state department be decided at one hearing with all responsible state or local agencies joined as parties. (Gov. Code, § 7576, subs. (a) and (c).)

SCCOE, District and Student oppose the motion to join on the grounds that they have settled Student's claims as to their responsibilities for the 2011-2012 and 2012-2013 school years, and that the case should proceed against CCS only.

Student's amended complaint alleges new and additional denials of FAPE in the 2011-2012 and 2012-2013 school years, which necessarily implicates the local educational agencies responsible for providing Student with special education and related services. Student makes new allegations of inadequacies in his IEP's, which were prepared by the educational agencies responsible for Student's special education and related services, and not by CCS. The amended complaint also alleges violations of procedural safeguards in the IEP process, not in the medical therapy process. Logic dictates that the agencies who made the determinations regarding Student's educational needs, and held the IEP team meetings and drafted the IEP documents, be parties to this action challenging the sufficiency of those documents and IEP procedures, and Chapter 26.5 mandates that all local agencies responsible for related services be joined as parties to one due process hearing on disputes regarding such services. Even if, as Student claims, all issues with the educational agencies have been settled, such settlements cannot operate to shift responsibility to provide a FAPE from the educational agencies to CCS, and the contents of the settlements will be at issue in any hearing. Thus, the motion to join District and SCCOE is granted.

Whether or not the terms of the settlement between SCCOE, District and Student on the original complaint extend to the allegations of Student's amended complaint requires a factual inquiry, and may be argued by SCCOE and District at hearing.

ORDER

1. CCS's motion to limit issues at hearing is denied.

3. CCS's motion to join the Cupertino Union School District (District) and the Santa Clara County Office of Education (SCCOE) as parties to this due process proceeding, as to the new issues raised in Student's amended complaint, is granted. This matter shall be known as Student v. California Children's Services, Cupertino Union School District and Santa Clara County Office of Education.

4. CCS shall serve a copy of the amended complaint on District and SCCOE no later than January 5, 2012. OAH shall serve a copy of this order on District and SCCOE at their addresses of record with OAH.

5. Pursuant to title 20 United States Code section 1415(c)(2)(E)(ii), the applicable timeline for this due process hearing, including the resolution session, recommences as of the date of this order, in order to allow District and SCCOE to participate in a resolution session.

6. All previously scheduled hearing and mediation dates are vacated. A scheduling order with new mediation, prehearing conference and hearing dates shall be forwarded to all parties by OAH.

Dated: December 27, 2012

/s/

ALEXA J. HOHENSEE
Administrative Law Judge
Office of Administrative Hearings