

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN JUAN UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2012090196

ORDER DENYING MOTION TO
DISMISS

On September 5, 2012, attorney F. Richard Ruderman filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of Student naming California Children’s Services (CCS) and San Juan Unified School District (District).

On January 7, 2013, attorney Demond L. Philson filed on behalf of CCS a motion to dismiss CCS as a party. Student filed an opposition to the motion on January 10, 2013. The District did not file a response to the CCS motion.

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 & 56028.5.)

Title 34, Code of Federal Regulations, part 300.33 states that a “[p]ublic agency includes the SEA [state educational agency], LEAs [local educational agencies], ESAs [educational service agencies], nonprofit public charter schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities.” (Accord, Ed. Code, § 56500.)

Chapter 26.5 of the Government Code requires that disputes concerning CCS’s provision of related services be resolved in special education due process hearings. Section 7586, subdivision (a), provides that “[a]ll state departments, and their designated local

agencies, shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code.”

DISCUSSION

In his complaint Student contends that CCS provided Student with physical therapy and occupational therapy during the 2009-2010 school year (SY), and the 2010-2011 and 2011-2012 SY's. However, Student alleges that these services were not documented in any of Student's individualized education programs (IEP's), nor is there evidence that CCS participated at all in the IEP process. Student then alleges that during the 2010-2011 SY the District and CCS failed to assess him in regards to his need for physical therapy and occupational therapy, although his previous IEP's contained goals to address fine motor deficits. Finally, Student contends that CCS denied him a FAPE by failing to participate in the IEP process, unilaterally reducing his physical therapy and occupational therapy, and failing to advise Student's Parents of their rights to maintain the same level of services when CCS reduced its services to Student in December of 2011.

CCS contends that OAH does not have jurisdiction to hear Student's claims against CCS regarding its purported failure to provide Student with medically necessary occupational therapy and physical therapy services and its failure to attend IEP team meetings. CCS contends that because OAH lacks jurisdiction, it cannot be considered a responsible public agency, and that the District is responsible for educationally-necessary occupational therapy and physical therapy services as the responsible local education agencies.

CCS's legal reasoning was rejected in *Student v. California Children's Services* (April 19, 2012) Cal.Ofc.Admin.Hrngs. Case No. 2011060589, pp. 12-15.¹ CCS in this present motion to dismiss does not bring forth any additional factual or legal argument to distinguish this case from the April 19, 2012 decision against it, except to state that the prior decision was not correct. However, CCS failed to appeal this decision. Other ALJ's at OAH have followed this decision and denied similar requests from CCS to be dismissed from other IDEA due process matters. The decision in Case No. 2011060589 followed long standing precedent in California. (*Student v. Fresno Unified School District* (June 15, 2001) 102 LRP 4471.

There are certain factual issues concerning CCS's participation, if any, in the IEP process, as well as its duty to assess Student and whether it procedurally complied with the

¹ This case set forth that the legal reasoning why *Nevada County Office of Educ. v. Riles* (1983) 149 Cal.App.3d 767, which would support CCS's position that it is not a responsible public agency under IDEA or law, is no longer persuasive authority due to subsequent changes to Chapter 26.5 of the Government Code.

IDEA in providing and reducing services to Student that are at issue. Accordingly, CCS's motion to dismiss is denied.

ORDER

CCS's motion to dismiss is denied. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: March 27, 2013

/s/

REBECCA FREIE
Administrative Law Judge
Office of Administrative Hearings