

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

GUARDIAN ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, LOS ANGELES COUNTY
DEPARTMENT OF MENTAL HEALTH
AND CALIFORNIA DEPARTMENT OF
EDUCATION.

OAH CASE NO. 2010101137

ORDER DENYING LOS ANGELES
COUNTY OFFICE OF EDUCATION'S
MOTION TO DISMISS ISSUES ONE
AND TWO AND GRANTING AS TO
ISSUE THREE

On October 25, 2010, Student filed a Request for Due Process Hearing (complaint) against the Los Angeles County Office of Education (LACOE), Los Angeles County Department of Mental Health (LACDMH) and California Department of Education (CDE). On November 5, 2010, LACOE filed a Motion to Dismiss, alleging that it is not a proper party to this action because Student alleges that she was denied a free appropriate public education (FAPE) due to LACDMH failure to attend the October 20, 2010 expanded individualized education program (IEP) to discuss possible residential placement. LACOE also seeks to dismiss Issue Three for not alleging that LACOE denied Student a FAPE. The Office of Administrative Hearings (OAH) has not received a response to the Motion to Dismiss from Student, LACDMH or CDE.

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).)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and Section 1983 of Title 42 United States Code.

DISCUSSION

Issues One and Two

LACOE's Motion to Dismiss Issues One and Two centers on LACDMH's failure to participate in IEP meetings to discuss possible residential placements and to agree to new residential placements due to the Governor's October 8, 2010 veto of state funding to county mental health agencies to provide mental health services for special education students pursuant to Government Code sections 7570, et seq. In this case, LACDMH conducted an assessment that purportedly recommended a residential placement for Student. However, LACDMH did not attend the IEP meeting to discuss its assessment due to the Governor's veto. LACOE contends that the inability for the IEP team to finalize a residential placement was the sole responsibility of LACDMH because of its failure to attend the IEP meeting.

While Student continues to reside in juvenile hall, LACOE is responsible for her education, including meeting her mental health needs and the provision of a residential placement if needed for Student 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 that Student receive a FAPE onto LACDMH. 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 Issues One and Two is denied because LACOE is a potentially responsible party since the dispute regarding the appropriate placement offer involves multiple agencies that have the responsibility to make the placement offer. (Govt. Code, § 7586, subd. (c).)

Issue Three

Regarding Issue Three, OAH does not have jurisdiction to hear Student's claims that LACOE, LACDMH or CDE violated Section 504 or Section 1983. Accordingly, Issue Three is dismissed.

ORDER

1. LACOE's Motion to Dismiss Issues One and Two is denied.
2. LACOE's Motion to Dismiss Issue Three is granted. The matter shall proceed as scheduled as to Issues One and Two.

IT IS SO ORDERED.

Dated: November 15, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings