

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF
EDUCATION, ET AL.

OAH CASE NO. 2010110325

ORDER DENYING STUDENT'S
MOTION TO DISMISS LOS ANGELES
COUNTY DEPARTMENT OF
MENTAL HEALTH

On February 1, 2011, Guardian on behalf of Student (Student) filed a motion to dismiss the Los Angeles County Department of Mental Health (CMH) as a party without prejudice. The basis of Student's motion is that Student's counsel and CMH had agreed to a stipulation in the instant matter and three related cases. The stipulation cites that all four students are eligible for special education and that AB 3632 (mental health services) are included in the students' Individualized Education Programs (IEP's); the applicable statutes of limitations are tolled; CMH agrees that the IDEA exhaustion requirement has been met; and CMH will not assert the defense of failure to exhaust administrative remedies in any federal action filed by any of the four students. In the motion, Student states that to the extent that OAH issues a ruling that CMH is totally or partially responsible for providing Student with a free appropriate public education (FAPE), "an appropriate decision would reduce Petitioner's award proportionally."

On February 2, 2011, Torrance Unified School District (TUSD) filed an opposition to the motion. On February 3, 2011, the California Department of Mental Health (CDMH) also filed opposition to the motion. TUSD contends that CMH is an indispensable party and should not be dismissed. CDMH avers that CMH "may be a responsible party in these proceedings" as acknowledged by Student in his motion. In essence, CDMH is contending, like TUSD, that CMH is an indispensable party to this matter.

APPLICABLE LAW AND DISCUSSION

In his Request for Due Process Hearing (complaint), Student contends that his September 27, 2010 IEP placed him in a residential treatment center (RTC), which constituted FAPE. Student alleges that it is the responsibility of the local education agency along with CMH to fund this placement. In the event that CMH can or will not fund the placement, it is the responsibility of CDMH to do so.

An indispensable party is one where a complete relief can not be accorded when that party is absent. (Code Civ. Proc., § 389, subd. (a)(1).) Here in Issue 1, Student seeks

compensatory education for the failure to provide mental health services as called for in his IEP. In Issue 2, Student seeks an order setting forth which agencies are responsible for providing him with a FAPE- the local education agency along with the responsible agency to fund Student's attending a RTC as provided in his IEP. In order to provide Student the relief, it is necessary that all parties be present. In order to ensure that Student receives a FAPE, an award of compensatory education, for example, can not be reduced because Student's counsel enters into an agreement with a party which will benefit in another ongoing litigation. Thus, Student's motion to dismiss Los Angeles County Department of Mental Health is DENIED.

Dated: February 08, 2011

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings