

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

LOS ANGELES COUNTY OFFICE OF EDUCATION, TORRANCE UNIFIED SCHOOL DISTRICT, CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY, CALIFORNIA DEPARTMENT OF MENTAL HEALTH, and LOS ANGELES COUNTY DEPARTMENT OF MENTAL HEALTH.

OAH CASE NO. 2010110325

ORDER GRANTING CALIFORNIA HEALTH AND HUMAN SERVICES AGENCY'S MOTION TO BE DISMISSED AS PARTY; DENYING CALIFORNIA DEPARTMENT OF MENTAL HEALTH'S MOTION FOR RECONSIDERATION; DENYING MOTION TO DISMISS BECAUSE ISSUES ARE NOT RIPE

PROCEDURAL HISTORY

Student filed a Due Process Hearing Request (complaint) on November 8, 2010, naming the Los Angeles County Office of Education (LACOE), the Torrance Unified School District (TUSD), the California Department of Education (CDE), the California Health and Human Services Agency (CHHS), the California Department of Mental Health (CDMH), and the Los Angeles County Department of Mental Health (LACDMH). In the month and a half since Student filed his complaint, numerous motions have been filed by various respondents, many of which impact the instant motion to dismiss filed by CHHS and CDMH. It is therefore appropriate to detail a brief history of each motion and resulting order by the Office of Administrative Hearings (OAH).

CDMH filed a notice of insufficiency regarding the complaint on November 23, 2010, alleging that the complaint did not contain specific facts regarding any actions it took or failed to take with regard to the provision of a free appropriate public education (FAPE) to Student. CDMH asserted that the allegations of the complaint were so vague and ambiguous that it could not respond to it. OAH found the complaint sufficient as to CDMH on November 30, 2010. On November 23, 2010, CDMH filed a motion to dismiss, alleging that it is not a responsible educational agency, and that OAH does not have jurisdiction to hear Student's non-special education claims. CDMH asserted that it is not an appropriate party to this action because the responsibility for conducting any mental health assessments and provision of mental health services for Student rests with LACDMH. On December 6, OAH denied CDMH's motion to dismiss, finding that a triable issue for hearing exists as to whether CDMH is responsible for providing mental health services to Student pursuant to

Government Code, section 7576, subdivision (a). However, in its order denying CDMH's motion to dismiss it as a party, OAH granted CDMH's motion to dismiss issue two of Student's complaint, finding that alleged violations of state and federal constitutional and civil rights statutes are outside the jurisdiction of OAH.

On November 24, 2010, CDE filed a motion to dismiss, which OAH granted in an order issued December 3, 2010.

TUSD filed a motion to dismiss on December 14, 2010. OAH denied TUSD's motion to dismiss itself as a party on December 23, but granted TUSD's motion to dismiss any allegations and proposed remedies in Student's complaint concerning similarly situated students or proposed remedies for systemic and structural relief.

Finally, CDMH and CHHS filed the instant motion to dismiss on December 20, 2010. Student filed an opposition on December 22, and CDMH and CHHS filed a reply to Student's opposition on December 27. CDMH and CHHS allege that Student's issues are not ripe for adjudication, that Student has failed to state specific allegations as to violations of his educational rights against either of them, and that OAH does not have jurisdiction over some of Student's claims. As explained below, CDMH's motions to dismiss it as a party is denied as is the motion of both respondents to dismiss based on lack of ripeness. However, CHHS's motion to dismiss it as a party is granted. With regard to the allegations that OAH lacks jurisdiction over some of Student's claims, that motion is denied as moot.

DISCUSSION

CDMH's Motion for Reconsideration is Denied

CDMH states that this second motion to dismiss is based on different legal theories than its original motion. To the extent that CDMH asserts that it is not an appropriate party to this action because it has performed all its duties which it was required to do after the Governor's veto on October 8, 2010 of the appropriation of funds for AB632, those issues were raised in its original motion and rejected by OAH in its order dated December 6, 2010. CDMH's instant motion is therefore in the nature of a motion for reconsideration.

The Office of Administrative Hearings will generally reconsider a ruling upon a showing of new or different facts, circumstances, or law justifying reconsideration, when the party seeks reconsideration within a reasonable period of time. (See, e.g., Gov. Code, § 11521; Code Civ. Proc., § 1008.) The party seeking reconsideration may also be required to provide an explanation for its failure to previously provide the different facts, circumstances or law. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1199-1200.)

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).)

Government Code section 7571 states that the Secretary for CHHS may designate a state governmental department to assume the responsibilities of providing special education services and, further, shall designate a single agency in each county to coordinate the service responsibilities as describe by statute thereafter.

If required by a student's individualized education program (IEP), CDMH, or a community mental health service agency designated by CDMH, is responsible for the provision of mental health services after the completion of mental health assessment. (Gov. Code, § 7576, subd. (a) and (b).) CDMH has designated by regulation that the community mental health service agency of student's county of origin is responsible for conducting the mental health assessment and provision of mental health services. (Cal. Code Regs., tit. 2, § 60200, subd. (c).)

CDMH cites Government Code section 7576.2 as definitively limiting its responsibility to monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils and to ensure that funds provided for this purpose are appropriately utilized. However, section 7576, subdivision (a) states that CDMH, or any community mental health service designated by CDMH, ". . . is responsible for the provision of mental health services . . ." In this case, LACDMH purportedly denied any responsibility to provide Student with mental health services, specifically with funding for placement at a residential treatment center, due to the Governor's October 8, 2010 veto of state funding to county mental health agencies. Because LACDMH purportedly refused to participate in Student's individualized education plan process and fund Student's placement at a residential treatment center, a triable issue for hearing exists whether CDMH was responsible to provide the requested mental health services pursuant to Government Code, section 7576, subdivision (a).

CDMH has not presented any new or different facts, circumstances, or law justifying reconsideration of the order finding that it is an appropriate party to this action. The motion for reconsideration of OAH's December 6, 2010 order is therefore denied.

To the extent that CDMH alleges in its instant motion that there are no specific allegations made by Student in his complaint against it, as opposed to alleging that it is not a proper party, those contentions were previously addressed by OAH. In its notice of insufficiency, CDMH raised similar allegations, contending that Student's complaint was vague and ambiguous, at least as it pertained to it. However, OAH found Student's complaint to be sufficient as to CDMH. CDMH cannot now use the motion to dismiss process as another means of raising issues concerning the sufficiency of Student's complaint, particularly where those contentions were already considered and rejected by OAH. The allegations concerning CDMH are sufficient. Its motion to dismiss is therefore denied as to any assertions by CDMH that Student's complaint fails to state specific allegations against it.

CHHS's Motion to Be Dismissed as a Party Is Granted

Section 7571 defines CHHS' role in the division of interagency responsibilities as the designation of a state department to assume the responsibilities described in section 7570 (ensuring maximum utilization of all available state and federal resources to provide FAPE to children with disability) and county agencies responsible for coordinating the services described in section 7572 (assessments, related services, designated instruction and services). Unlike section 7576's designation of CDMH as the ultimate provider of mental health services, section 7571 does not state that CHHS is responsible for the provision of services to a student.

The complaint raises no claims that CHHS denied Student a FAPE and seeks no remedies from CHHS, other than for CHHS to exercise supervisorial authority to ensure that Student receives a FAPE. Further, the complaint makes no claims that CHHS is a public agency involved in the provision of special education services or decisions regarding Student. The issue of CHHS' designation of state government departments and county agencies is outside the scope of OAH's jurisdiction. Accordingly, CHHS is not a necessary or proper party to the complaint, and its motion to be dismissed as a party is granted.

Motion to Dismiss Because Claims Are Not Ripe is Denied

The motion to dismiss is also based upon the assertion that the claims are not ripe for adjudication because there is no existing dispute between the parties. CDMH and CHHS argue that the claims seek present adjudication of a possible future denial of services when a temporary restraining order issued by the federal court expires. Thus, the Student has not been harmed. However, at the time of the complaint's November 8, 2010 filing, Student alleges he was being denied the mental health services which he requires, in part because LACDMH refused to participate in his individualized education program meetings resulting in the failure of any entity to offer him an appropriate placement and services. Therefore, based upon the allegations as stated in Student's complaint, a dispute does exist as to denial of mental health services as of the time of the complaint's filing.

Motion to Dismiss Systemic, Structural, and "Class Action" Claims is Denied as Moot

Student seeks OAH adjudication of systemic issues involving the state and county structuring for the provision of mental health services to Student and other "similarly situated" children. Such claims exceed the issue of proper placement and the provision of FAPE to Student. OAH therefore dismissed them in an order issued December 27, 2010. The request by CDMH and CHHS for dismissal of those same claims is therefore moot. To the extent that any clarification is necessary, the prior dismissal of claims related to similarly situated students also dismissed any proposed resolution in the nature of systemic and structural changes, as beyond the jurisdiction of OAH in special education due process proceedings.

The due process hearing in this matter therefore will proceed against the remaining respondents only on issues related to the placement and provision of FAPE to Student, as more specifically pled in the complaint.

ORDER

1. CDMH's motion to dismiss is deemed a motion for reconsideration and, as such, is denied. To the extent that CDMH claims that its motion to dismiss is based upon its assertion that the complaint contains no specific allegations as to it, the motion to dismiss is denied as well.
2. CHHS's motion to be dismissed as a party is granted.
3. The motion to dismiss, because the claims are not ripe, is denied.
4. The motion to dismiss claims for state and county systemic and structural relief, and claims on behalf of "other similarly situated" children, is denied as moot.
5. The due process hearing will proceed against the remaining respondents only on issues regarding the placement and provision of FAPE to Student, as pled in the complaint.

Dated: December 29, 2010

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings