

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

OAH CASE NO. 2010110435

ORDER DENYING CALIFORNIA
DEPARTMENT OF MENTAL
HEALTH'S MOTION TO DISMISS
ITSELF AS A PARTY AND
GRANTING THE MOTION TO
DISMISS AS TO ISSUE TWO

On November 8, 2010, Student filed a Due Process Hearing Request (complaint) against the Los Angeles County Office of Education (LACOE), the Torrance Unified School District (TUSD), California Department of Education (CDE), California Health and Human Services Agency (CHHS), California Department of Mental Health (CDMH), and Los Angeles County Department of Mental Health (LACDMH). On November 23, 2010, CDMH filed a Motion to Dismiss, alleging that it is not a responsible educational agency, and that the Office of Administrative Hearings (OAH) does not have jurisdiction to hear Student's non-special education claims. On December 1, 2010, Student, TUSD, and LACOE filed an opposition, and CDMH filed a reply brief on December 2, 2010.¹

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.)

¹ On December 3, 2010, CHHS requested to join CDMH's Motion to Dismiss. CHHS' request is untimely as the other parties have filed responses to CDMH's motion. Therefore, CHHS it needs to file its own motion.

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).)

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. (Govt. 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).)

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), 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.)

OAH does not have jurisdiction to entertain claims based on other provisions of Federal and California law, such as the Due Process and Equal Protection Clauses of the Federal and California Constitutions, Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. § 701 et seq.), the Americans with Disabilities Act (ADA) (42 U.S.C. § 12101, et seq.), and the Unruh Civil Rights Act (Unruh Act) (Civ. Code, § 51 et seq.).

DISCUSSION

CDMH as a Responsible Educational Agency

CDMH asserts that it is not an appropriate party to this action because the responsibility for conducting any mental health assessment and provision of mental health services for Student rests with LACDMH. Student asserts that CDMH is an appropriate party in this action because LACDMH has refused to assess Student for eligibility for mental health services, and therefore the responsibility to ensure Student's assessment rests upon CDMH.

CDMH relies on *Student v. California Dept. of Mental Health* (2009) Cal.Offc.Admin.Hrngs. Case No. 2009050920, for its contention that it is not a proper party to this action. In that case, CDMH was found not to be a responsible public agency. However, that case is distinguishable from this matter because Sacramento County Department of Behavioral and Health Services, Division of Mental Health acknowledged that it was responsible for providing student's mental health services as the county of origin and willing to provide services, including a residential placement.² In contrast, in this case, LACDMH purportedly denied any responsibility to provide Student with mental health services due to the Governor's October 8, 2010 veto of state funding to county mental health agencies. Because LACDMH purportedly refused to provide Student with mental health services, such as failing to attend Student's October 18, 2010 IEP meeting after LACDMH's assessment recommended a residential placement, a triable issue for hearing exists whether CDMH is responsible to provide the requested mental health services pursuant to Government Code, section 7576, subdivision (a). Accordingly, CDMH's motion to dismiss itself as a party is denied.

Issue Two

In the present matter, Student alleges in Issue Two that the responding parties violated provisions of Section 504, ADA, Student's constitutional rights and the Unruh Act. OAH does not have jurisdiction to hear Student's claims in Issue Two. Accordingly, Issue Two is dismissed.

ORDER

1. CDMH's Motion to Dismiss itself as a party is denied.
2. CDMH's Motion to Dismiss Issue Two is granted. The matter will proceed as scheduled as to the remaining issue.

Dated: December 6, 2010

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings

² CDMH raised for the first time in its reply brief that the Governor's October 8, 2010 veto of AB 3632 funding relieves county mental health departments from complying with the applicable state mandate. Because CDMH did not raise this contention in its moving papers, it will not be considered in this order. Additionally, a question exists whether OAH, in a special education hearing, has jurisdiction to consider CDMH's position regarding the suspension of a state mandate. (*Tri-County Special Educ. Local Plan Area v. County of Tuolumne* (2004) 123 Cal.App.4th 563, 573-576.)