

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN LUIS OBISPO COUNTY MENTAL
HEALTH.

OAH CASE NO. 2011020473

ORDER DENYING MOTION TO
DISMISS

On April 29, 2011, San Luis Obispo County Mental Health (County) filed a motion to dismiss, contending that Student's complaint is moot as the County has already performed the proposed resolutions Student requested and because the County no longer needs to provide mental health services pursuant to AB 3632 as those services are an unfunded mandate.¹ On May 5, 2011, Student filed an opposition.

APPLICABLE LAW

Under the doctrine of mootness, a court may refuse to hear a case because it does not present an existing controversy by the time of decision. (*Wilson v. Los Angeles County Civil Service Com.* (1952) 112 Cal.App.2d 450, 453.) However, mootness is not a jurisdictional defect. (*Plymouth v. Superior Court* (1970) 8 Cal.App.3d 454, 460.) A case may be moot when the court cannot provide the parties with effectual relief. (*MHC Operating Ltd. Partnership v. City of San Jose* (2003) 106 Cal.App.4th 201, 214.) An exception to the mootness doctrine is made if a case presents a potentially recurring issue of public importance. (*DiGiorgio Fruit Corp. v. Dept. of Employment* (1961) 56 Cal.2d 54, 58.)

Although OAH will grant motions to dismiss allegations that are facially outside of OAH jurisdiction (e.g., civil rights claims, section 504 claims, enforcement of settlement agreements, incorrect parties, etc....), special education law does not provide for a summary judgment procedure.

¹ California has established a statutory scheme that provides for interagency responsibility in regards to the provision of special education related services, including mental health services. (Gov. Code, §§ 7570–7588 (Ch. 26.5).) The statutory scheme is known as AB 3632 after the Assembly Bill that created the 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.)

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).)

DISCUSSION

Mootness

The County asserts that Student’s complaint is moot because the County has provided the mental health services specified in Student’s individualized educational program (IEP) and because of the settlement that Student reached with the Lucia Mar Unified School District (District). The County’s request that the Office of Administrative Hearings (OAH) determine that Student’s complaint is moot is in fact a motion for summary judgment, which OAH does not have jurisdiction to entertain. The County raises numerous factual arguments, which Student counters in his opposition. Therefore, a triable issue for hearing exists whether the County provided the mental health services in Student’s IEP and if Student has already obtained from the District in the settlement agreement the mental health services requested from the County in the proposed resolution.

Proper Party

The County asserts that the matter against it should be dismissed because it is not an appropriate party to this action. The County contends that the Governor’s October 8, 2010 veto of funding for AB 3632 services suspended any mandate for county mental health agencies to provide these services, and that recent court decisions, *County of Sacramento v. State of California* (2011) Sacramento County Superior Court No. 34-2010-00090983 and *California School Boards Ass’n. v. Brown* (2011) 192 Cal.App.4th 1507, support this contention. Additionally, the County contends that mental health services it provided after the October 8, 2010 veto were pursuant to a contract entered into between it and the San Luis Obispo County Special Education Local Planning Area (SELPA) on January 11, 2011, and therefore the County is not a proper party as it was merely a service provider. Student argues that the County is a proper party because the contract with the SELPA places the responsibility on the County to provide mental health services to students and that the

County accepts responsibility for the provision of these services with the receipt of federal special education funding through the SELPA.

While the Governor's veto may have released the County from any obligation to provide Student with mental health services, and placed that obligation on the District, the County decided to accept federal special education funding to provide these mental health services pursuant to the January 2011 contract. The contract specifies that the SELPA shall pass through to the County federal special education funds for the County's provision of mental health services. Additionally, the County agreed to indemnify the SELPA for any claims that arise from the County's provision of services pursuant to the contract. Finally, the County was not merely a service provider, but intrinsically involved in the IEP process in developing and providing mental health services for a student pursuant to the contract.

The County failed to establish it should be dismissed as a party because it is no longer responsible to provide AB 3632 services because these services are an unfunded mandate due to the Governor's veto. Because the County, pursuant to the January 2011 contract, receives federal special education funds and is responsible for developing a student's mental health services through the IEP process, and responsible for ensuring the provision of mental health services in a student's IEP, the County is a public agency and a proper party in this action pursuant to Education Code, sections 56500, 56501, subdivision (a), and 56028.5. (See *Student v. Montebello Unified School District, Los Angeles County Office of Education, and Bellflower Unified School District* (2009) Cal.Ofc.Admin.Hrngs. Case No. 2008090354, pp. 38-39.) Therefore, County's motion to dismiss is denied as it is a public agency responsible for providing special education services to Student and an appropriate party to this action.

ORDER

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

Dated: May 6, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings