

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

CALIFORNIA MONTESSORI PROJECT;
SAN JUAN UNIFIED SCHOOL
DISTRICT; YUBA COUNTY SELPA;
AND SACRAMENTO COUNTY CHILD
AND FAMILY MENTAL HEALTH.

OAH CASE NO. 2011030849

ORDER GRANTING MOTION TO
DISMISS SACRAMENTO COUNTY
CHILD AND FAMILY MENTAL
HEALTH FROM STUDENT'S
COMPLAINT

On March 17, 2011, Parent on behalf of Student filed a request for due process hearing (complaint), naming California Montessori Project (CMP), San Juan Unified School District (SJUSD), Yuba County SELPA (Yuba SELPA), and Sacramento County Child and Family Mental Health (Mental Health) as respondents.

On March 21, 2011, the Yuba SELPA filed a request for exclusion from the case (motion for dismissal as a party). Also on March 21, 2011, SJUSD also filed a motion to be dismissed as a party to Student's complaint. OAH has dismissed both parties from Student's complaint pursuant to an Order issued March 28, 2011.

On March 25, 2011 Mental Health filed a motion to be dismissed from Student's complaint contending that Student's complaint fails to state a cause of action against Mental Health; that Mental Health has no obligation to provide Student with mental health services due to the suspension of the AB 3632 mandate for the fiscal year 2010-2011; and that OAH has no jurisdiction over Mental Health over services which have been suspended for the fiscal year 2011-2012.

Student has not filed a response or opposition to Mental Health's request.

APPLICABLE LAW AND DISCUSSION

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. Here, the motion is limited to dismissal of an incorrect party.

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.)

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).)

Mental Health contends that Student has failed to state a cause of action. Student’s complaint alleges that CMP failed to make an AB 32632 referral of Student to Mental Health. As indicated above, Mental Health’s responsibility to provide a student with mental health services arises only *after* the district has referred Student to Mental Health by obtaining parental consent, preparing a referral package and providing it to Mental Health. It is undisputed that no referral was made to Mental Health, therefore Mental Health is not a proper party to this complaint. Mental Health’s remaining contentions regarding the AB 3632 mandate need not be discussed or determined.

ORDER

1. Sacramento County Child and Family Mental Health’s motion to dismiss itself is granted. Sacramento County Child and Family Mental Health is dismissed as a party in the above-entitled matter.
2. The matter will proceed as scheduled against the remaining party, California Montessori Project.

IT IS SO ORDERED.

Dated: March 28, 2011

/s/

JUDITH PASEWARK

Administrative Law Judge
Office of Administrative Hearings