

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LAGUNA BEACH UNIFIED SCHOOL  
DISTRICT AND ORANGE COUNTY  
HEALTH CARE AGENCY.

OAH CASE NO. 2011040126

ORDER DENYING MOTION TO  
DISMISS

On April 4, 2011, Student filed a Request for Due Process Hearing (complaint) against the Laguna Beach Unified School District (District) and Orange County Health Care Agency (OCHCA). On September 1, 2011, OCHCA filed a motion to be dismissed as party, asserting that the Office of Administrative Hearings (OAH) did not have jurisdiction over OCHCA due to the suspension of the mandate on county mental health agencies to provide mental services based on the decisions in *California School Boards Ass'n. v. Brown* (2011) 192 Cal.App.4th 1507 and *County of Sacramento v. State of California* (2011) Sacramento County Superior Court No. 34-2010-00090983. Neither Student nor the District filed a response.

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.)

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.)

Under the IDEA and state law, children with disabilities have the right to a FAPE. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) Local educational agencies (LEAs) are required as part of their obligation to provide “related services” if the student needs them. (20 U.S.C. § 1401(26).) Related services are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (*Ibid.*) In California, related services are called designated instruction and services (DIS), which must be provided if they may be required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).) DIS can include mental health services. (Ed. Code, § 56363, subs. (b)(9), (10).)

In 1984 the Legislature passed AB 3632, adding Chapter 26.5 to the Government Code (Gov. Code, § 7570 et seq.).<sup>1</sup> AB 3632 divided responsibility for the delivery of mental health services to special education students between the Superintendent of Public Instruction and the Secretary of Health and Human Services. Under Chapter 26.5, the county mental health agency "is responsible for the provision of mental health services" to the student "if required in the individualized education program [IEP]" of the student. (§ 7576, subd. (a).) The school district remains ultimately responsible for making a FAPE available to a student needing mental health services. (20 U.S.C. § 1414(d)(2); Ed. Code, § 56040(a).)

Before July 1, 2011, under AB 3632, a student who had been determined to be an individual with exceptional needs or is suspected of needing mental health services may, after the Student’s parent had consented, be referred to a community mental health service in accordance with former section 7576 (inoperative July 1, 2011 and repealed January 1, 2012, unless otherwise amended by January 1, 2012, Ch. 43, § 35, Stats. 2011). If the student met criteria for a referral specified in California Code of Regulations, title 2, section 60040, and the school district, in accordance with specific requirements, prepared a referral package and provided it to the community mental health service. (Ed. Code, § 56331, subd. (a), inoperative July 1, 2011 and repealed January 1, 2012, unless otherwise amended by January 1, 2012, Ch. 43, § 26, Stats. 2011.)

The county mental health agency then assessed the student, and if the student was eligible for its services, placed a representative on the IEP team. (§ 7572.5, subd. (a), inoperative July 1, 2011 and repealed January 1, 2012, unless otherwise amended by January 1, 2012, Ch. 43, § 33, Stats. 2011.) If the student required a residential placement, the county mental health agency became the lead case manager and was responsible for the

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<sup>1</sup> All statutory citations herein are to the Government Code unless otherwise stated.

non-educational costs of the placement, while the school district was responsible for the educational costs. (§ 7572.5, subd. (c)(1), inoperative July 1, 2011 and repealed January 1, 2012, unless otherwise amended by January 1, 2012, Ch. 43, § 33, Stats. 2011, and § 7581.) In addition, any parent, student, or agency may request a due process hearing, and OAH has jurisdiction to decide the matter under the procedures applicable to special education due process hearings. (§ 7586, subd. (a).) This is such a proceeding.

In May 2010, during negotiations with the Legislature concerning the budget for fiscal year (FY) 2010-2011, the Governor requested that the Legislature suspend the AB 3632 mandate. (Legislative Analyst's Office, Overview of the May Revision, Assembly, and Senate Budget Plans, June 4, 2010 (Revised), Presented to the Conference Committee on the Budget, at p. 8.)<sup>2</sup> The Legislature declined to do so. On October 8, 2010, the Legislature sent to the Governor its 2010-11 Budget Act (Ch. 712, Stats. 2010), which in item 8885-295-0001 provided full funding for AB 3632 services. On that same day, the Governor signed the Budget Act after exercising his line-item veto authority on several items in the Act. One of the items he vetoed was the appropriation for AB 3632 services by county mental health agencies. In his veto message he stated: "This mandate is suspended." (Sen. Bill 870, 2010-11 (Reg. Sess.) (Chaptered), at p. 12.) The Governor's exercise of his line-item veto power is not in dispute here.

## DISCUSSION

The thrust of OCHCA's motion to dismiss is that the Court of Appeals' opinion in *California School Boards Ass'n. v. Brown* (2011) 192 Cal.App.4th 1507 and Superior Court decision in *County of Sacramento v. State of California* (2011) Sacramento County Superior Court No. 34-2010-00090983, absolve it of responsibility for any purported failure to comply with the requirements of AB 3632 after the Governor's October 8, 2010 veto.

According to the complaint, OCHCA assessed Student pursuant to a contract with the District and OCHCA finished its assessment report on March 7, 2011, which recommended a residential treatment facility placement. At the March 22, 2011 IEP team meeting, the proposed IEP stated that OCHCA would provide Student with mental health services pursuant to a memorandum of understanding between the District and OCHCA. Parents did not consent to the IEP offer of a residential treatment facility placement because the IEP did not offer Island View Residential Treatment Center, where Parents privately placed Student in late-January 2011, because Island View might not meet District and OCHCA funding criteria. The OCHCA does not dispute any of Student's complaint allegations in its motion to dismiss. Instead, OCHCA relies on the argument that it is not a proper party to this action because it does not have the legal obligation to provide mental health services pursuant to AB 3632 and it merely provides mental health services pursuant to an agreement with the District.

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<sup>2</sup> Official notice is taken of the Legislative Analyst's Overview.

While the Governor's veto may have released OCHCA from any obligation to provide Student with mental health services, and placed that obligation on the District, OCHCA decided to accept federal special education funding to provide these mental health services pursuant to its agreement with the District. According to the complaint, OCHCA was not merely a service provider, but intrinsically involved in the IEP process in developing and offering to provide mental health services for Student pursuant to the agreement.

OCHCA 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 OCHCA, pursuant to its agreement with the District, 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 Student's IEP, OCHCA 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, OCHCA'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

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

Dated: September 12, 2011

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings