

RE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CALAVERAS UNIFIED SCHOOL  
DISTRICT AND CALIFORNIA  
CHILDREN'S SERVICES

OAH CASE NO. 2011060589

ORDER DENYING MOTION TO  
DISMISS CALIFORNIA CHILDREN'S  
SERVICES

On June 13, 2011, Guardian on behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming Calaveras Unified School District (District). On August 11, 2011, the Office of Administrative Hearings (OAH) granted Student's Motion to File an Amended Complaint naming California Children's Services (CCS) as a second respondent.

CCS initially forwarded a Motion to Dismiss CCS as a Party to OAH in October 2011; however, this filing does not appear in the OAH file. Therefore, on December 6, 2011, CCS refilled and served its motion. On December 8, 2011, Student filed an Opposition to the Motion, and on December 13, 2011, the District filed a Joinder in Student's Opposition to the Motion. On December 14, 2011, CCS filed a Response to Opposition.

CCS contends that OAH does not have jurisdiction over Student's claims raised against it. While CCS may attend an IEP meeting, CCS contends it is not a member of the IEP team, nor does it share its decision making authority with the IEP team. Specifically, CCS contends that it is only responsible for provision of medically necessary services for students; that OAH has no jurisdiction to determine what constitutes medically necessary services; that the adequacy of Student's IEP, including the adequacy of OT services, is the responsibility of the District; and that there is another administrative forum where any disputes and/or issues pertaining to CCS' medical necessity determinations are properly litigated. Student and the District disagree, and contend that CCS is a public agency as defined by federal and state law, and that state law pertaining to interagency responsibilities mandates that disputes over CCS' assessment and provision of services be adjudicated in this due process proceeding. Further, Student contends there is a disagreement as to the factual basis of whether CCS is a member of the IEP team; whether the terms of the IEP apply to CCS; and determination of whether CCS services have a sufficient nexus to the IEP to require compliance under the IDEA.

## 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.)

FAPE means special education and related services that are available to the child at no charge to the parent or guardian, meet state educational standards, and conform to the child’s IEP. (20 U.S.C. § 1401(9).) Special education related services, called designated instruction and services in California, include, in pertinent part, developmental, corrective, and supportive services, such as PT and OT, as may be required to assist a child with a disability to benefit from special education. (20 U.S.C. §1401(a)(26); Ed. Code, § 56363.)

Pursuant to Chapter 26.5 of Title 1, Division 7 of the Government Code (entitled “Interagency Responsibilities for Related Services” and commonly referred to as AB 3632), it is the joint responsibility of the Superintendent of Public Instruction (Superintendent) and the Secretary of Health and Human Services (Secretary) to ensure maximum utilization of resources to provide a child with a disability with a FAPE. (Gov. Code, § 7570.)

Government Code section 7575 states, in pertinent part:

(a)(1) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, by reason of medical diagnosis and *when contained in the child's individualized*

*education program.* (italics added.)

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, that the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil.

Special education services to individuals are mandated by federal and state laws and regulations including the IDEA, Section 504 of the Rehabilitation Act of 1998, the Americans with Disabilities Act of 1990, the California Education Code, and Titled 5 of the California Code of Regulations.

Medically necessary therapy services for children with conditions eligible for the California Children's' Therapy Program are mandated by the California Health and Safety Code and Title 22 of the California Code of Regulations.

All state departments and their designated local agencies shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code. A due process hearing arising over a related service or designated instruction and service shall be filed with the Superintendent of Public Instruction. Resolution of all issues shall be through the due process hearing process established in Chapter 5 (commencing with Section 56500) of Part 30 of Division 4 of the Education Code. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter. (Gov. Code, § 7586, subd. (a).)

Upon receipt of a request for due process hearing involving an agency other than an educational agency, the Superintendent of Public Instruction shall immediately notify the state and local agencies involved by sending a copy of the request to the agencies. (Gov. Code, § 7586, subd. (d).)

All hearings requests that involve multiple services that are the responsibility of more than one state department shall give rise to one hearing with all responsible state or local agencies joined as parties. (Gov. Code, § 7586, subd. (c).)

## DISCUSSION

The IDEA applies to state and local educational agencies, and also to any other political subdivisions of the State that are responsible for providing to children with disabilities. (34 C.F.R. § 300.33 (2006); Ed. Code, § 56028.5.) The California Department of Education (CDE) and the Department of Health Services (DHS) operate as independent political departments and are mandated under separate state laws and regulations.

Student's amended complaint alleges that CCS unilaterally terminated medically necessary OT and PT services which were contained in Student's IEP and failed to attend Student's IEP meeting, which resulted in both a procedural and substantive denial of FAPE.

CCS cites to the case of *Nevada County Office of Education v. Superintendent of Public Instruction* (1983) 149 Cal.App.3d 767 (hereafter *Nevada County*). In *Nevada County*, the Nevada County Office of Education sought to join CCS as a party to a due process hearing after CCS found that a student, who had been referred to it by the County, was not eligible for OT services under CCS criteria. The student then filed a due process complaint alleging that he was not receiving FAPE. The Court of Appeal affirmed the hearing officer's decision, which the trial court had upheld on appeal, which denied the request to join CCS as a party. The court stressed that the federal statutory scheme (then the Education for All Handicapped Children Act, the predecessor to the IDEA) placed primary responsibility for compliance with federal law on the public education agency, the entity that federal law designated for insuring that a child receive educational and related services. Which state agency should fund those services, stated the court, was beyond the scope of a due process hearing as contemplated by Education Code section 56000 et seq.

The Opposition relies heavily on the OAH order issued June 9, 2011, Case No. 2011020489, in which the ALJ determined that the precedent cited by CCS in support of dismissal in *Nevada County* was issued prior to the enactment of AB 3632, and therefore did not parse California's current statutory scheme for interagency responsibilities for related services, resulting in a question of fact to be determined by the hearing ALJ.

CCS has provided a copy of the *State Interagency Cooperation Agreement Between the California Department of Education (CDE) and the California Department of Health Services (DHS), Children's' Medical Branch, California Children's Services/Medical Therapy Program (CCS)* (hereafter IA), which sets out the interagency responsibilities between DHS and CDE as well as CCS and the LEA.. CCS contends that the question of OAH jurisdiction over CCS is controlled by these interagency agreements and thusly CCS must be dismissed as a matter of law. In considering the agreements between CDE and DHS, it is noted that the relationship between CCS and the CDE/LEA is financial in nature, and does not provide for the substantive determination of whether the related services provided by CCS are necessary to provide Student a FAPE. The interagency agreements may provide the departments with guidance regarding their governmental relationship; however, they do not affect the Student's right to independently seek a due process hearing as prescribed by the IDEA.

As stated above, all state departments and their designated local agencies shall be governed by the procedural safeguards required in Section 1415 of Title 20 of the United States Code, and resolution of all issues shall be through the due process hearing process. The decision issued in the due process hearing shall be binding on the department having responsibility for the services in issue as prescribed by this chapter. (Gov. Code, § 7586, subd. (a).) Therefore, OAH has jurisdiction in all hearings requests that involve multiple services that are the responsibility of more than one state department, as they shall give rise to one hearing with all responsible state or local agencies joined as parties. (Gov. Code, § 7586, subd. (c).)

### ORDER

The Motion to Dismiss by California Children's Services is denied. The matter will proceed as scheduled.

IT IS SO ORDERED.

Dated: January 13, 2012

/s/

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JUDITH PASEWARK  
Administrative Law Judge  
Office of Administrative Hearings