BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. NORTHERN HUMBOLDT UNION HIGH SCHOOL DISTRICT AND HUMBOLDT COUNTY MENTAL HEALTH.	OAH CASE NO. 2011060790 AMENDED ORDER DENYING HUMBOLDT COUNTY MENTAL HEALTH'S MOTION TO BE DISMISSED AS A PARTY[1]

On June 16, 2011, Student filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Northern Humboldt Union High School District (District) and Humboldt County Mental Health (County).

On June 27, 2011, the County filed a motion to be dismissed as party, asserting that OAH did not have jurisdiction over the County 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

[1] On July 8, 2011, an Order Denying Humboldt County Mental Health's Motion to be Dismissed as a Party was issued, which failed to state, in the "Order" section, that the motion to be dismissed was denied. This Amended Order Denying Humboldt County Mental Health's Motion to be Dismissed as a Party corrects that error. No other changes have been made.

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, subds. (b)(9), (10).)

In 1984 the Legislature passed AB 3632, adding Chapter 26.5 to the Government Code (Gov. Code, § 7570 et seq.).[2] 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.)

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[2] All statutory citations herein are to the Government Code unless otherwise stated.

The county mental health agency then assessesed 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 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.)[3] 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 the County'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 during the 2010-2011 fiscal year.[4]

According to the complaint, the County began its mental health assessment in May 2010 to determine Student's eligibility for AB 3632 mental health services. On May 25, 2010, the County determined that Student was not eligible for AB 3632 services and accordingly did not recommend placement in a residential facility. The complaint does not allege any violation by the County during the 2010-2011 fiscal year.

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[3] Official notice is taken of the Legislative Analyst's Overview.

[4] July 1, 2010 through June 30, 2011.

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 only held that the Governor's October 8, 2010 veto of funding for AB 3632 services suspended the mandate for county mental health agencies to provide these services during the 2010-2011 fiscal year. Neither decision excused the County for any purported violation that occurred during the 2009-2010 fiscal year. Therefore, the County's motion to be dismissed as a party is denied because the alleged violations occurred during the 2009-2010 fiscal year.

ORDER

The County's motion to be dismissed as a party is denied.

Dated: July 12, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings