

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ROSEVILLE JOINT UNION HIGH  
SCHOOL DISTRICT AND PLACER  
COUNTY CHILDREN'S SYSTEM OF  
CARE.

OAH CASE NO. 2011061341

ORDER DENYING MOTION TO  
DISMISS

On August 9, 2011, Placer County Children's System of Care (County CSOC)<sup>1</sup> filed a motion to dismiss all allegations against County CSOC, and dismiss it from this case. On August 10, 2011, Student filed an opposition. County CSOC filed a reply on August 11, 2011. Roseville Joint Union High School District (District) did not file a response. On August 24, 2011, OAH provided notice to the parties that the motion would be addressed at the telephonic prehearing conference (PHC) on August 31, 2011. On August 31, 2011, the PHC was held and the parties were provided the opportunity to orally argue the motion.<sup>2</sup> The motion was submitted.

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. County CSOC's motion asks for an order to dismiss all claims against it, and to dismiss County CSOC as a party to the action.

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<sup>1</sup> County CSOC filed a notice of insufficiency motion on July 8, 2011, which indicated that it was incorrectly named "Placer County Mental Health" in this action. The caption is hereby changed to reflect the accurate name of this public entity.

<sup>2</sup> A separate PHC order was issued to address all other matters discussed in preparation for the hearing.

County CSOC argues that it should be dismissed as a party as a matter of law because OAH has no jurisdiction over County CSOC in this case. County CSOC asserts that it had, and has, no legal obligation to provide services to Student during the 2010-2011 school year, it was not a public agency with respect to Student, and the remedy Student seeks from it cannot legally be ordered by OAH at this time. As the following analysis demonstrates, this is not a matter of simply identifying an incorrect party to the action. Rather, County CSOC's arguments go to the heart of its defenses to the action, and require an evidentiary hearing.

Special education due process hearing procedures extend 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.)

In general, County CSOC is a public agency created by statute. The State of California is divided into 58 legal county subdivisions. (Cal. Const. Art. 11, § 1(a).) The County of Placer functions, as all counties do, to provide municipal services to its residents, and to act as a delivery channel for State services, such as public health care and foster care. For purposes of special education, Education Code section 56028.5 provides that:

*"Public Agency" means a school district, county office of education, special education local plan area, a nonprofit public charter school ...[as specified]..., or any other public agency under the auspices of the state or any political subdivision of the state providing special education or related services to individuals with exceptional needs. For purposes of this part, "public agency," means all of the public agencies listed in Section 300.33 of Title 34 of the Code of Federal Regulations. [Emphasis added.]*

Section 300.33 of the federal regulations provides in part that "public agency" includes "any other political subdivisions of the State that are responsible for providing education to children with disabilities."

Under the Individuals with Disabilities in Education Improvement Act (IDEA) and State law, children with disabilities have the right to a free appropriate public education (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 pupil needs them. (20 U.S.C. § 1401(26).) Related services are defined as 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 (called designated instruction and services) must be provided if required to assist the child in benefiting from special education. (Ed. Code, § 56363, subd. (a).) Related services include mental health services. (Ed. Code, § 56363, subs. (b)(9), (10).)

Prior to July 1, 2011, pursuant to Chapter 26.5 of the Government Code, mental health services related to a pupil's education were provided by a local county mental

health agency that was jointly responsible with the school district.<sup>3</sup> (Govt. Code §7570, et seq., often referred to by its Assembly Bill name, AB 3632 [Chapter 26.5]) A pupil who was determined to be an individual with exceptional needs and was suspected of needing mental health services to benefit from his or her education, could, after the pupil’s parent had consented, be referred to a community mental health service, such as County CSOC, in accordance with Government Code section 7576. The pupil had to meet the criteria for referral specified in California Code of Regulations, title 2, section 60040; and the school district, in accordance with specific requirements, had to prepare a referral package and provide it to the community mental health service. (Ed. Code, § 56331, subd. (a); Cal. Code Regs., tit. 14, § 60040, subd. (a); Govt. Code § 7576 et seq.)

Chapter 26.5 also provides that:

All hearing 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. (Govt. Code § 7586, subd. (c).)<sup>4</sup> [Emphasis added.]

Student asserts in her opposition that she has been eligible for, and has received mental health services under Chapter 26.5 since she was in seventh grade, and that, for the 2010-2011 school year, she continued to do so in eleventh grade. She claims that County CSOC attended her individualized education program (IEP) meetings, and offered and provided IEP-driven mental health services to her in 2010 and 2011, including a mental health assessment for referral to a residential treatment center in early 2011. Student’s evidence submitted in opposition to the motion supports her claim.

Based on the foregoing, there is no question that County CSOC was a public agency operating under the auspices of the State and the County of Placer, and was statutorily responsible for providing Student mental health services related to her education pursuant to her IEP, at least through the 2009-2010 school year. In addition, County CSOC, a public entity operating by virtue of its authority as a political subdivision of the State and County, *provided* Student IEP-related mental health services during the 2010-2011 school year.

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<sup>3</sup> Government Code section 7570 provides that the Superintendent of Education and the Secretary of the Health and Human Services Agency are jointly responsible to provide related services, including mental health services; and section 7571 provides that the Secretary may designate a State department to assume the responsibilities, and shall also designate “a single agency in each county to coordinate the service responsibilities described in Section 7572.” These sections have not been amended or repealed in 2011. However, portions of Section 7572 have been amended or repealed in 2011.

<sup>4</sup> This section has not been amended or repealed in 2011.

July 1, 2011 Change in the Law

On June 30, 2011, the California Governor signed into law a budget bill (SB 87), and a trailer bill affecting educational funding (AB 114). Together they did not repeal Chapter 26.5 of the Government Code in its entirety, but made substantial changes to it and related laws. Sections repealed are suspended effective July 1, 2011, and will be repealed by operation of law on January 1, 2012. In significant part, the obligation of the State Department of Mental Health, and its county designees, including County CSOC, to assess and provide related mental health services to special education pupils has been suspended, and the responsibilities have been transferred to the LEAs instead. (See Govt. Code § 7573.) Henceforth, the LEAs, including District in the instant case, will have the lead responsibility to provide mental health care services to its qualifying students.

The matter is not that simple, however. The new budget allocates monies to LEAs to fund mental health services (approximately \$221.8 million dollars, SB 87.) Significantly, the new budget makes a one-time appropriation from the State general fund of \$80 million dollars to mental health agencies to partially backfill county mental health expenditures under Chapter 26.5 for the 2010-2011 fiscal year. (SB 87.) In addition, another \$98.6 million from the Proposition 63 Mental Health Services Act is allocated in the new budget for county mental health agencies to fund nonsupplanting IEP/mental health care services for the 2011-2012 fiscal year. The law provides that an LEA can develop an MOU or a contract with its county mental health agency setting forth the details of the two agencies' respective responsibilities, in order to access those funds. (SB 87, item 4440-295-3085.)

By virtue of the above, beginning on July 1, 2011, it is clear that County CSOC is no longer statutorily obligated to assess and provide mental health services to qualifying special education pupils under Chapter 26.5, including Student. However, County CSOC and District may enter into a contract and access public funds for delivery of mental health services. In addition, County CSOC may access public funds to reimburse its IEP-related services for the past fiscal year. County CSOC has not pointed to any legal authority that would relieve it from liability for past conduct while Chapter 26.5 was operative. In addition, County CSOC has not provided any legal authority that would prohibit OAH from issuing an order providing an equitable remedy based on such past liability, or for a reimbursable period. Accordingly, the passage of legislation effective July 1, 2011, suspending and repealing County CSOC's statutory obligations regarding mental health services does not support dismissing the agency as a party to this case without an evidentiary hearing.

October 8, 2010 Suspension of Legal Mandate

Prior to July 2011, on October 8, 2010, the Legislature sent to the prior Governor its 2010-11 Budget Act (Ch. 712, Stats. 2010), which, in item 8885-295-0001, provided full funding for Chapter 26.5 mental health services. On that same day, the Governor signed the Budget Act after exercising his line-item veto authority. One of the items he vetoed was the appropriation for Chapter 26.5 mental health services by county mental health agencies (also

referred to as AB 3632). In his veto message he stated: “This mandate is suspended.” (Sen. Bill 870 [SB 870], 2010-11 (Reg. Sess.) (Chaptered), at p. 12.)

County CSOC claims that it has not been responsible for services to Student under Chapter 26.5 of the Government Code since October 8, 2010, because the Governor vetoed funding for those services and suspended the statutory mandate that the services be provided by county mental health agencies. County CSOC argues that on February 25, 2011, the California Court of Appeal for the Second Appellate District affirmed the constitutionality of the Governor’s authority to suspend the statutory mandate. (*Cal. Sch. Bds. Ass’n v. Edmund G. Brown Jr., Gov.* (2011) 192 Cal.App.4th 1507 [122 Cal.Rptr.3d 674], pet. for rev. denied June 8, 2011, [Cal. Supreme Ct. S191952] (*CSBA v. Brown*).

Student concedes the controlling effect of *CSBA v. Brown*. Hence, from at least October 8, 2010, through June 30, 2011, County CSOC’s statutory mandate to assess and provide mental health services was suspended under SB 870, and County CSOC had no obligations to Student under Chapter 26.5, per se, in connection with this case.

However, this does not end the inquiry. As found above, the budget bill for the 2011-2012 fiscal year allocates public monies to reimburse County CSOC for IEP-related mental health services delivered during the 2010-2011 fiscal year. At least after October 8, 2010, while County CSOC’s statutory mandate was suspended by the Governor, Student claims that she will present evidence that County CSOC continued to attend her IEP meetings and provide mental health services. County CSOC argues that it “voluntarily” continued services pending court approval of the Governor’s actions. However, County CSOC did not present any evidence as to the circumstances or its agreements, if any, with District for continued services.

Under the circumstances of this case, a hearing is therefore required as to County CSOC because there are factual matters involved in evaluating its role, its relationship with District, and its obligations, if any, to Student during the 2010-2011 school year, that require the taking of evidence. Here, County CSOC’s motion is not limited to matters that are facially outside of OAH jurisdiction. Since this would in effect be a summary judgment ruling on the merits, the motion is denied on that basis. An evidentiary hearing is required in order to evaluate Student’s claims and County CSOC’s defenses prior to rendering a decision on the merits of the claims.

ORDER

County CSOC's Motion to Dismiss is denied at this time. The matter shall proceed as scheduled.

IT IS SO ORDERED.

Dated: September 9, 2011

/s/

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DEIDRE L. JOHNSON  
Administrative Law Judge  
Office of Administrative Hearings