

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

HUNTINGTON BEACH UNION HIGH
SCHOOL DISTRICT AND ORANGE
COUNTY HEALTH CARE AGENCY.

OAH CASE NO. 2011080880

ORDER GRANTING IN PART AND
ORANGE COUNTY HEALTH CARE
AGENCY'S MOTION TO DISMISS

On August 22, 2011, Student filed a Due Process Hearing Request (complaint) naming the Huntington Beach Union High 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 for claims that occurred on or after October 8, 2010, 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, and Student did not allege any claims against OCHCA before October 8, 2010. 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, subds. (b)(9), (10).)

In 1984 the Legislature passed AB 3632, adding Chapter 26.5 to the Government Code (Gov. Code, § 7570 et seq.).¹ 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,

¹ All statutory citations herein are to the Government Code unless otherwise stated.

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.)² 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. Additionally, OCHCA contends that Student's complaint does not include any allegations that it denied him a FAPE before October 8, 2010.

According to the complaint, the District referred Student to OCHCA for a mental health assessment in July 2010, and OCHCA completed and presented its assessment at the September 2010 IEP team meeting. At the IEP team meeting, OCHCA recommended a residential treatment facility placement, but a dispute between the District and OCHCA prevented Student's placement in a residential treatment facility that he required to receive a FAPE. Therefore, Student's complaint contains allegations that OCHCA denied Student a FAPE before October 8, 2010.

As to Student's claims that occurred on or after October 8, 2010, OCHCA established that pursuant to the court decisions in *California School Boards Ass'n. v. Brown* (2011) 192

² Official notice is taken of the Legislative Analyst's Overview.

Cal.App.4th 1507 and *County of Sacramento v. State of California* (2011) Sacramento County Superior Court No. 34-2010-00090983, that OCHCA had no legal obligation to provide mental services to Student. Additionally, Student's complaint contains no allegations that OCHCA provided any special education services to Student on or after October 8, 2010. Accordingly, Student's claims against OCHCA that occurred on or after October 8, 2010, are dismissed because OCHCA did not provide any special education services to Student, nor did it have a legal obligation to provide him with any services.

ORDER

OCHCA's motion to dismiss is granted in part as to Student's claims against OCHCA that occurred on or after October 8, 2010. The matter shall proceed as scheduled.

Dated: September 13, 2011

/s/

PETER PAUL CASTILLO
Administrative Law Judge
Office of Administrative Hearings