

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

BERKELEY UNIFIED SCHOOL
DISTRICT AND ALAMEDA COUNTY
BEHAVIORAL HEALTH CARE
SERVICES

OAH CASE NO. 2012010446

ORDER DENYING ALAMEDA
BEHAVIORAL HEALTH SERVICES
MOTION TO DISMISS

On January 17, 2012, Parent on Behalf of Student (Student) filed a Request for Due Process Hearing (complaint), naming Berkeley Unified School District (District) and Alameda County Behavioral Health Services as (ACBHCS) as respondents.

On February 24, 2012 ACBHCS filed a motion to dismiss; on February 28, 2012 District filed its opposition to the motion; and on February 29, 2012, Student filed his opposition. On February 29, 2012, a prehearing conference (PHC) was held before the undersigned. The parties were allowed oral argument on the pending motion.

APPLICABLE LAW

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 the Office of Administrative Hearings is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

Public agencies are defined as a school district, county office of education, special education local plan area, a nonprofit public charter school, or any other public agency under the auspices of the state or any political subdivisions of the state providing special education or related services to individuals with exceptional needs. (Ed. Code, § 56500 and 56028.5) The Code of Federal Regulation specifically reference departments of mental health as a political subdivision of the state involved in the education of children with disabilities. (34 C.F.R. § 300.2(b)(iii).)

DISCUSSION

The gravaman of Student's complaint seeks reimbursement to his parents for costs associated with an out-of-state residential placement. ACBHCS is alleged in the complaint to have provided Student with an assessment report recommending that he receive residential treatment, as well as previously providing funding for therapeutic costs of the residential placement. Thus, from the face of the complaint, ACBHCS is a public agency involved in decisions regarding Student's special education placement. Accordingly, a dismissal of them as a party is unsupported.

ACBHCS contends that Student's complaint fails to set forth specific claims against it. While this may have been proper for a Notice of Insufficiency, ACBHCS did not timely file one. While Student's complaint contains general averments and lacks specificity as to why he believes ACBHCS is responsible for any or all of the requested reimbursements, these are specifics that can be fleshed out at the prehearing conference in this matter. Accordingly, Student is directed to provide a more particular basis for his case against ACBHCS in his prehearing conference statement.

ORDER

ACBHCS motion to dismiss is denied. This matter shall proceed to hearing as scheduled.

Dated: March 2, 2012

/s/

GARY GEREN
Administrative Law Judge
Office of Administrative Hearings