

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

OAKLAND UNIFIED SCHOOL
DISTRICT; ALAMEDA COUNTY
MENTAL HEALTH.

OAH CASE NO. 2012040848

ORDER DENYING ALAMEDA
COUNTY MENTAL HEALTH'S
MOTION TO BE DISMISSED AS
A PARTY

On April 20, 2012, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a due process request (complaint) naming the Oakland Unified School District (District) and Alameda County Mental Health (ACMH) as respondents.

On June 20, 2012, ACMH filed a motion to be dismissed from Student's complaint contending that ACMH has no obligation to provide Student with mental health services due to the suspension of AB 3632 (Govt. Code § 7570 et. seq., often referred to by its Assembly Bill name, AB 3632.)

The District filed a non-opposition to ACMH's request on June 20, 2012. Student has not filed a response or opposition to ACMH's request.

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.

Special education due process hearing procedures extend to "the public agency involved in any decisions regarding a pupil." (Ed. Code, § 56501, subd. (a); emphasis added.) In California, the determination of which agency is responsible to provide education to a particular pupil is, in most instances, governed by residency requirements as set forth in sections 48200 and 48204 of the Education Code. (*Katz v. Los Gatos-Saratoga Joint Union High School Dist.* (2004) 117 Cal.App.4th 47, 57; *Orange County Dept. of Educ. v. A.S.* (C.D. Cal. 2008) 567 F.Supp.2d 1165, 1167.) A local educational agency (LEA) is generally responsible for providing a free appropriate public education to pupils with disabilities who

reside within the LEA's jurisdiction. (20 U.S.C. § 1414(d)(2)(A); Ed. Code, § 48200.)

ACMH contends that Assembly Bill 114, effective July 1, 2011, makes the school district solely responsible for Student's education, including issues concerning his mental health. ACMH basically argues that it is no longer one of the public agencies responsible for any portion of Student's education, including related services addressing Student's mental health needs.

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 Title 34 of the United States Code of 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.”

Prior to July 1, 2011, mental health services related to a student's education were provided by a local county mental health agency that was jointly responsible with the school district pursuant to Chapter 26.5 of the Government Code. (Gov. Code §7570, et seq., often referred to by its Assembly Bill name, AB 3632 [Chapter 26.5].) A student 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 student's parent had consented, be referred to a community mental health service, such as DMH, in accordance with Government Code section 7576. The student 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); Gov. Code § 7576 et seq.)

On October 8, 2010, the California Legislature sent to former Governor Arnold Schwarzenegger, 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. The funding was in the form of reimbursement to community mental health agencies which had already performed Chapter 26.5 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. In his veto message the Governor stated: “This mandate is suspended.” (Sen. Bill 870 [SB 870], 2010-11 (Reg. Sess.) (Chaptered), at p. 12.)

On February 25, 2011, the California Court of Appeal for the Second Appellate District affirmed that the Governor had authority to veto the funding for the statutory mandate. (*Cal. Sch. Bds. Ass'n v. Edmund G. Brown Jr., Gov.* (2011) 192 Cal.App.4th 1507, review denied June 8, 2011) (*CSBA v. Brown*.) In doing so, the court distinguished between a gubernatorial action “suspending” the Chapter 26.5 mandate, which would have been an unconstitutional substantive change to the law in violation of the single-subject rule, and the Governor’s veto to eliminate a funding appropriation. The court held the latter action was constitutional and resulted in freeing the local agencies from the legal duty to implement the statutory mandate. Thus, even though the Governor characterized his action as “suspending” the statutory Chapter 26.5 mandate, the Court of Appeal upheld his action as a veto of the funding appropriation for Chapter 26.5 services, which by operation of law freed MH from the legal duty to implement the mandate but did not substantively change the law.

On June 30, 2011, present California Governor Jerry Brown signed into law a new Budget Bill (SB 87) for the 2011-2012 fiscal year, and a trailer bill affecting educational funding (AB 114). Together the two bills did not repeal Chapter 26.5 of the Government Code in its entirety, but made substantial changes to it and related laws, particularly with respect to mental health services. Sections repealed were suspended effective July 1, 2011, and were 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 DMH, to assess and provide related mental health services to special education pupils has been suspended, and the statutory responsibilities have been transferred to the LEAs instead. (See Gov. Code § 7573.) Henceforth, as of July 1, 2011, the LEAs, including District in the instant case, have the lead responsibility to provide related mental health care services to its qualifying pupils.

The new budget (SB 87) allocates approximately \$221.8 million dollars to LEAs to fund mental health services. Significantly, the new budget makes a one-time appropriation from the State general fund of another \$80 million dollars to county mental health agencies to partially backfill county mental health expenditures under Chapter 26.5 for the 2010-2011 fiscal year. (*Ibid.*) In addition, another \$98.6 million from the Proposition 63 Mental Health Services Act is diverted by 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 may develop 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.)

Therefore, as of July 1, 2011, Chapter 26.5 has been fundamentally changed and significant statutory provisions for related mental health services have been suspended, subject to repeal. ACMH is no longer statutorily obligated to assess and provide mental health services to qualifying special education pupils under Chapter 26.5, including Student.

However, in the present case, Student has alleged claims regarding the provision of mental health services, including issues pertaining to placement at a residential treatment center and a mental health assessment, which occurred during the 2010-2011 school year.

Moreover, in its pleading ACMH appears to have taken responsibility for Student's mental health related educational services for periods during the 2010-2011 school year.

Under the circumstances of this case, a hearing is therefore required as to ACMH because there are factual matters involved in evaluating its role, its relationship with the District, and its obligations, if any, to Student during the 2010-2011 school year, that require the taking of evidence. Here, ACMH'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 MH's defenses prior to rendering a decision on the merits of the claims.

ACMH has therefore failed to meet its burden to demonstrate that it is not a proper party to this action.

ORDER

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

IT IS SO ORDERED.

Dated: June 22, 2012

/s/

PAUL H. KAMOROFF
Administrative Law Judge
Office of Administrative Hearings